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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 224.

CHARLES C. CADMAN, APPELLANT,

vs.

WILLIAM PETER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

FILED MAY 7, 1883.

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1 THE UNITED STATES OF AMERICA, *ss*:

To William Peter, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to an appeal this day allowed to Charles C. Cadman in a cause lately pending in the circuit court of the United States for the western district of Michigan, in equity, wherein Charles C. Cadman was complainant and you, William Peter, *was* defendant, and you, William Peter, are to show cause, if any there be, why the decree rendered against the said Charles C. Cadman, from which appeal is taken, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable S. L. Withey, United States district judge of the western district of Michigan, sitting as a judge of the circuit court for the western district of Michigan, in equity, this ninth day of October, in the year of our Lord one thousand eight hundred and eighty-two.

S. L. WITHEY,
District Judge.

2 UNITED STATES OF AMERICA,
State and Eastern District of Michigan, } *ss*:

Supreme Court.

CHARLES C. CADMAN *vs.* WILLIAM PETER.

Sewall S. Parker, being duly sworn, says that on the 18th day of December, 1882, he served the within citation on William Peter, defendant in the above-entitled cause, by delivering to him personally, at the place of business of said William Peter in Toledo, Ohio, a true and inscribed copy thereof, at the same time showing to him the original, herewith returned.

SEWALL S. PARKER.

Subscribed and sworn to before me this 18th day of December, A. D. 1882.

C. L. KENNEDY,
Notary Public, Lucas County, Ohio.

[Endorsed:] No. 611. Circuit court of the United States for the western district of Mich. In equity. Charles C. Cadman *vs.* William Peter. Citation—proof of service. Filed February 8, 1883. Henry M. Hinsdill, clerk.

3 Supreme Court of the United States.

CHARLES C. CADMAN *vs.* WILLIAM PETER.

Know all by these presents that we, Charles C. Cadman, of San Francisco, California, and William Livingstone, Jr., of Detroit, Michigan, are held and firmly bound unto William Peter, of Toledo, Ohio, in the sum of five hundred dollars, to be paid to the said William Peter or his legal representatives; to which payment, well and truly to be made, we bind ourselves and our legal representatives. Sealed with our seals and dated this 20th day of November, 1882.

Whereas the above-named Charles C. Cadman has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the suit of Charles C. Cadman *vs.* William Peter by the circuit court of the United States for the western district of Michigan, sitting in equity:

Now, therefore, the condition of the obligation is such that if the above-named Charles C. Cadman shall prosecute his said appeal to effect, and answer all costs and damages if he shall fail to make good his appeal, then this obligation to be void; otherwise to remain of full force and virtue.

4 CHARLES C. CADMAN. [L. S.]
WILLIAM LIVINGSTONE. [L. S.]

Sealed and delivered in presence of—
JOHN STEVENSON.
R. W. GUISE.

STATE AND EASTERN DISTRICT OF MICHIGAN,
County of Wayne, } *ss:*

On this 25th day of November, 1882, before me, the undersigned, a commissioner of the circuit court of the United States for the eastern district of Michigan, personally appeared William Livingstone, Jr., of Detroit, Wayne county, Michigan, known to me to be the person named in and who signed the foregoing appeal bond, and duly acknowledged that he executed the same.

[SEAL.] HERSCHEL WHITAKER,
U. S. Commissioner, E. D. Mich.

STATE AND EASTERN DISTRICT OF MICHIGAN,
County of Wayne, } *ss:*

On this 25th day of November, 1882, before me, the undersigned, a commissioner of the circuit court of the United States for the eastern district of Michigan, personally appeared William Livingstone, Jr., of Detroit, Wayne county, Michigan, to me known to be the person named in and who signed the foregoing appeal
5 bond as durety and upon oath justified his pecuniary responsibility as such surety.

[SEAL.] HERSCHEL WHITAKER,
U. S. Commissioner, E. D. Mich.

STATE AND EASTERN DISTRICT OF MICHIGAN,
County of Wayne, } *ss:*

CHARLES C. CADMAN *vs.* WILLIAM PETER.

William Livingstone, Jr., being duly sworn, deposes and says that he is worth in unencumbered property the sum of five hundred dollars in excess of his indebtedness and consisting of property not exempt from execution.

WILLIAM LIVINGSTONE, Jr.

Subscribed and sworn to before me this 25th day of November, A. D. 1882.

HERSCHEL WHITAKER,
U. S. Commissioner, E. D. Mich.

State and Eastern District of Michigan, } *ss:*
County of Wayne, }

Charles F. Burton, being duly sworn, says that on Tuesday, the 28th day of November, 1882, he enclosed true copies of the foregoing bond affidavit and certificates in envelope and deposited 6 the same, with postage fully prepaid, in the post office at Detroit; that the said papers were directed to Geer and Williams, attorneys-at-law, Lapeer, Michigan.

CHARLES F. BURTON.

Subscribed and sworn to before me this 28th day of November, 1882.

[seal.] GEORGE GARTNER,
Notary Public, Wayne Co., Mich.

Eastern District of Michigan, *ss:*

On this sixth day of December, in the year of our Lord one thousand eight hundred and eighty-two, personally appeared William Livingstone, Jr., who, being duly sworn, deposes and says that he is worth the sum of ten thousand dollars in personal estate subject to execution in the eastern district of Michigan over and above all his just debts and liabilities; that said property consists of vessels, both steam and sail vessels, free and clear of all incumbrances.

W. LIVINGSTONE, Jr.

Subscribed and sworn to before me this 6th day of December, A. D. 1882.

D. J. DAVIDSON,
Comm. Circuit Court, East. Dist. Mich.

I do hereby approve of the foregoing bond, and believe the surety to be sufficient.

D. J. DAVIDSON,
C'lk U. S. Dist. C't, E. Dist. Mich.

Approved.
S. L. WITHEY,
Dist. Judge.

7 [Endorsed:] No. 611. Circuit court of the United States, west. dist. Mich., south. div. In equity. Charles C. Cadman *vs.* William Peter. Bond on appeal to Supreme C't U. S. Filed Dec. 7, 1882. H. M. Hinsdill, clerk.

8 In the Circuit Court of the United States for the Western District of Michigan. In Equity.

Complainant, Charles C. Cadman, who is a citizen of the State of California and a resident of San Francisco, in the said State of California, brings this his bill of complaint against William Peter, who is a citizen of Ohio and a resident of the city of Toledo, in said State, and alleges as follows:

1. About the year 1874 or 1875 complainant became indebted to defendant to the amount of ten thousand dollars for money borrowed of defendant by complainant; that such indebtedness arose by *by* said defendant, making his notes, two in number, *and* for the sum of five thousand dollars each, payable to complainant, and drawing interest at the rate of seven per cent. per annum, and delivering the same to complainant, to be by him indorsed and used for the purpose of obtaining money for complainant's benefit, and that complainant did so endorse and use them; that said notes were for short periods of time, but that as they came due they were from time to time renewed, complainant paying up the accrued interest at each renewal until the 30th day of October, 1875, hereinafter referred to.

2. Upon the 30th day of October, 1875, complainant was
9 seized and possessed of five thousand four hundred acres of land, covered with valuable pine timber, and situated in the county of Newaygo, in the State of Michigan, and in the western district of said State, which land was then valued at upwards of forty thousand dollars. That complainant was anxious to procure further sums of money, and applied to said Peters to furnish him the further sum of twenty thousand dollars, and that the negociations with said Peter culminated in an agreement substantially as follows:

In addition to the sum of ten thousand dollars already loaned to complainant, the defendant agreed to advance and loan to complainant the further sum of twenty thousand dollars, to be furnished by two notes of ten thousand dollars each, and complainant was thereupon to execute and deliver a deed of said land to said Peter as security for all the before-mentioned advances, and the said Peter was to hold such land until such time as it might be sold at a profit or for a greater sum than could then be realized, and when such time should come was to sell said land in the most advantageous manner possible, and out of the proceeds arising from such sale was to pay himself the said sums of ten and twenty thousand dollars and the interest thereon at the rate of seven per cent. per annum, and the taxes on said land that he should have paid, and
10 should divide the surplus, if any, retaining one-half for himself and paying over to complainant the other half.

3. That this agreement was entered into and the said deeds were executed and delivered at the office of Alfred Russell, Esq., in the city of Detroit, who acted as attorney for both complainant and defendant, and complainant received and used the said notes for twenty thousand dollars, and the said transaction was intended to operate as a security from complainant to defendant to secure to

him the repayment of the said thirty thousand dollars and the interest thereon, and was so considered by both complainant and defendant.

4. At the time said agreement was entered into and the land transferred from complainant to defendant the financial affairs of the country were greatly depressed, and lands of this character, containing large quantities of pine timber, and valuable chiefly for the pine timber standing on them, were not in great demand, and both complainant and defendant knew that an adequate price therefor could not be obtained; but it was well known to both parties that within a short time such timber land would greatly appreciate in value, and that by continuing to hold said land until it should rise in value they would be able to dispose of it at a price much beyond the sum of thirty thousand dollars.

11 5. That complainant had estimates of the amount of timber standing on said land, and, from the best advice he has been able to obtain, alleges that there was upwards of forty million feet of timber at the time of the transactions aforesaid standing on said land, and that at the time said deeds were executed and delivered it was not, and has never since that time been, worth less than sixty thousand dollars, and is now worth from eighty to one hundred and twenty thousand dollars, or would be of that value if no timber had been cut therefrom.

6. That during the last year the said property has become valuable, and it could now be readily sold for a sum sufficient to pay all of complainant's indebtedness to defendant and all moneys that defendant may have expended for taxes.

7. That complainant, on the — day of ——, applied to defendant for an accounting of his doings in said matter, and received a reply that the land had not yet been sold, and consequently no account could be rendered; that later, on the fourth day of February, A. D. 1881, complainant again applied to defendant to settle and arrange the matter in some way, and defendant then ignored the entire transaction and stated to complainant that he knew of no unsettled
12 transactions between complainant and defendant except an
indebtedness for ten thousand dollars from complainant to defendant, and complainant thereafter offered to pay the said Peters the sum of thirty thousand dollars and the interest thereon and any sums that might have been paid by said Peters for taxes or other proper expenses, and requested said Peter to release his said security and deed said land back to complainant.

8. And complainant further alleges that the said defendant has formed the purpose of refraining from exposing said land for sale, and in pursuance of said purpose has fraudulently refrained from exposing said land for sale, or selling the same in accordance with the agreement entered into between complainant and defendant, and is thereby seeking to prevent an accounting with complainant, and to retain to himself the entire — of said property; but complainant has been informed by one Nugent, who is employed by defendant as a scaler, and who is well acquainted with the lands herein referred to, that said defendant has lumbered said lands and cut therefrom

timber worth more than eighty thousand dollars, and complainant has further information, which he believes to be true and charges to be the fact, that defendant has caused to be cut and removed from said land all the valuable timber standing at the time said deed
13 was executed by complainant to him, on sections two (2), three
(3), four (4), and ten (10), in township fifteen north of range twelve west, and on sections thirty-three (33) and thirty-four (34), in township sixteen north of range twelve west, being the timber standing at the time of said sale on two thousand five hundred and sixty acres of said land.

9. That complainant is ready and willing to pay, and hereby offers to pay, any sum that may be found due from complainant to defendant, and is ready and willing to allow defendant such portion of the excess as may comply with his original agreement.

10. That the description of the lands deeded by complainant to defendant, and hereinbefore referred to, and which complainant seeks to redeem from the lien of said equitable mortgage, is as follows: All those certain pieces and parcels of land in the county of Newaygo and State of Michigan described as follows, to wit: In township fifteen north of range twelve west, in section two, the northwest quarter and the south half of the south half; entire section three; in section four, the southeast quarter and the north half; in section five, the south half; in section six, the south half; in section eight, the north half of the north half, the southwest quarter of the north-west quarter, and the south half; in section nine, the north
14 half; in section ten, the north half of the northeast quarter,
the northeast quarter of the northwest quarter, and the southwest quarter of the northwest quarter; in section twelve, the entire section; in township sixteen north of range twelve west, in section eight, the west half of the southeast quarter; in section nine, the southwest quarter; in section twenty-one, the northeast quarter; in section twenty-two, the west half; entire section thirty-three; in section thirty-four, the south half.

That by reason of the premises complainant has been greatly injured and has no remedy at law, and therefore seeks the aid of this court and prays as follows:

1. That defendant may answer the premises, but without oath, answer under oath being hereby expressly waived.

2. That an accounting may be had between complainant and defendant, and that this court may find and determine the amount of money due from complainant to defendant, or whether any sum remains to be paid, as well that secured by the said deed from complainant to defendant as any sums that may have been paid by defendant for taxes or other proper expenses upon said lands.

15 3. That this court may find and decree that the said deed
absolute in form was an equitable mortgage, intended by the parties as a security for moneys loaned and expenses to be incurred about said lands.

4. That the court may determine what timber said defendant has caused to be cut on any of said lands, and the value thereof, and may apply such value to the reduction of plaintiff's indebtedness to de-

fendant; and if the value of the timber so cut and removed shall be found to be equal to or exceed the amount of complainant's indebtedness, then that defendant may be ordered to deed said land to complainant, and pay over to complainant any sum that may remain after reimbursing himself for the sums of money loaned and such sums as defendant may have paid for taxes.

5. That complainant may be permitted to redeem said lands upon paying to said defendant the sum of money which shall be found by this court to be equitably due from complainant to defendant, and the court may thereupon order and direct the said defendant to transfer said lands by a good and sufficient deed to complainant.

16 6. That complainant may have such other or further or different relief as may be proper and equitable.

7. That the usual subpœna may issue.

CHARLES C. CADMAN.

CHARLES F. BURTON,
Solicitor for Complainant.

STATE OF MICHIGAN, *County of Wayne:*

On this 19th day of March, A. D. 1881, before me, a notary public in and for said county, appeared Charles C. Cadman, who subscribed the foregoing complaint, and made solemn oath that he had heard read the foregoing complaint by him subscribed and knows the contents thereof, and that the same is true of his own knowledge, except as to those things therein stated to be upon information and belief, and as to those he believes it to be true.

CHARLES H. CAMPBELL,
Notary Public, Wayne Co., Mich.

17 UNITED STATES OF AMERICA,
Eastern District of Michigan.:

On this twenty-eighth day of March, A. D. 1881, before me, a commissioner of the circuit court of the United States of America for the eastern district of Michigan, appeared Charles C. Cadman, who subscribed the foregoing complaint and made solemn oath that he had heard read the foregoing complaint by him subscribed and knows the contents thereof, and that the same is true of his own knowledge except as to those things therein stated to be upon information and belief, and as to those he believes it to be true.

HERSCHEL WHITAKER,
U. S. Commissioner.

[Endorsed:] No. 611. In the circuit court of the United States for the western district of Michigan. In equity. Charles C. Cadman *vs.* William Peter. Bill of complaint. Filed April 1st, 1881. H. M. Hinsdill, clerk. Charles F. Burton, sol. for comp.

18 In the Circuit Court of the United States for the Western District of Michigan. In Equity.

CHARLES C. CADMAN *vs.* WILLIAM PETER.

We, Charles F. Burton and Alfred Russell, acknowledge ourselves security for all costs for which the complainant, Charles C. Cadman, may become liable in this suit.

CHARLES F. BURTON.
ALFRED RUSSELL.

[Endorsed:] Circuit court of U. S. for W. D. of Mich. In equity. Charles C. Cadman *vs.* William Peter. Security for costs. Filed April 1, 1881. H. M. Hinsdill, clerk. Charles F. Burton, sol'r for comp.

19 *Chancery Subpœna.*

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } *ss:*

The President of the United States of America to William Peter, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the western district of Michigan, at Grand Rapids, in said district, on the first Monday in the month of May next, to answer the bill of complaint of Charles C. Cadman this day filed in the clerk's office of said court in said city of Grand Rapids, then and there to receive and abide by such judgment and decree as shall then or thereafter be made upon pain of judgment being pronounced against you by default.

To the marshal of the eastern district of Michigan to execute.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Grand Rapids aforesaid, this 1st day of April, in the year of our Lord one thousand eight hundred and eighty-one.

[Seal of U. S. Circuit Court.]

HENRY M. HINSDILL, *Clerk.*

20 *Memorandum.*

The within-named defendant is notified that unless he enter his appearance in the clerk's office of said court at Grand Rapids aforesaid on or before the day to which the within writ is returnable the bill of complaint will be taken against him as confessed, and a decree entered accordingly.

HENRY M. HINSDILL, *Clerk.*

To the marshal:

The marshal will serve this subpœna and notice for a writ of injunction personally upon each of the defendants, or, in case any of them cannot be found, then serve on such by leaving a copy thereof at the dwelling-house or usual place of abode of such defendant with some adult person who is a member or resident of the family, of suitable age and discretion.

—— ——,
Comp't's Sol'r.

WESTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return that on the 9th day of April, A. D. 1881, I served the within writ on William Peter, defendant within named, at Columbiaville, in said district, by delivering to him a true copy of the within writ and also showing him the original writ with the seal of the court impressed thereon. 21

SALMON S. MATTHEWS,
U. S. Marshal.
By STEPHEN HENRY, *Deputy.*

Marshal's fees, 6.70.

[Endorsed:] No. 611. Circuit court of the United States, western district of Michigan, southern division. Charles C. Cadman, complainant, *vs.* William Peter, defendant. Chancery subpœna. Returnable to rule day first Monday in May, A. D. 1881. Filed April 13th, A. D. 1881. H. M. Hinsdill, clerk. Charles F. Burton, comp't's sol'r.

22 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Southern Division. In Chancery.

CHARLES C. CADMAN, Complainant,
vs.
WILLIAM PETER, Defendant.

In this cause, on motion of Geer and Williams, solicitors for defendant, it is ordered that the appearance of the defendant be, and the same is hereby, entered, and on like motion it is further ordered that the complainant deliver a copy of the bill of complaint in this cause to the said solicitors for the defendant within twenty days after the service upon the solicitors for the complainant of notice of this order, and that in default thereof that said bill of complaint be dismissed with costs.

Dated April 11th, A. D. 1881.

GEER AND WILLIAMS,
Solicitors for Defendant.

[Endorsed:] No. 611. U. S. of America. U. S. circuit c't, W. dist. of Mich., southern division. In chancery. Charles C. Cadman, complainant, *vs.* William Peter, defendant. Entry of appearance. Filed April 11, 1881. H. M. Hinsdill, clerk. Geer & Williams, solicitors for defendant.

23 In the Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

Complainant, Charles C. Cadman, who is a citizen and resident of San Francisco, — the State of California, brings this his amended bill of complaint against William Peter, who is a citizen of Ohio and a resident of the city of Toledo, in said State, and alleges as follows:

1. About the year 1874 or 1875 complainant became indebted to defendant to the amount of ten thousand dollars for money borrowed of defendant by complainant; that such indebtedness arose by said defendant making his notes, two in number, and for the sum of five thousand dollars each, payable to complainant, and drawing interest at the rate of seven per cent. per annum, and delivering the same to complainant to be by him endorsed and used for the purpose of obtaining money for complainant's benefit, and that complainant did so endorse and use them; that said notes were for short time, but that as they came due they were from time to time renewed, complainant paying up the accrued interest at each renewal until the 25th day of October, 1875, hereinafter referred to.

2. Upon the 25th day of October, 1875, complainant was
24 seized and possessed of five thousand four hundred acres of land covered with valuable pine timber, and situated in the county of Newaygo, in the State of Michigan, and in the western district of said State, which land was then valued at upwards of forty thousand dollars; that complainant was anxious to procure further sums of money, and applied to said Peter to furnish him the further sum of twenty thousand dollars, and that the negociations with said Peter culminated in an agreement substantially as follows:

In addition to the sum of ten thousand dollars already loaned by complainant, the defendant agreed to advance and loan to complainant the further sum of twenty thousand dollars, to be furnished by two notes of ten thousand dollars each. And complainant was thereupon to execute and deliver a deed of said land to said Peter, as security for all the before-mentioned advances, and the said Peter was to hold said land until such time as it might be sold at a profit or for a greater sum than could be then realized, and when such time should come was to sell said land in the most advantageous manner possible, and out of the proceeds arising from such sale was to pay himself the said sums of ten and twenty thousand dollars, and interest thereon at the rate of seven per cent. per annum and the taxes on said lands that he should have paid, and should divide
25 the surplus, if any, paying over to complainant one-half, and retaining the other half of the surplus to recompense him for his labor, trouble, and expense in and about the sale and disposal of said property.

3. That this agreement was entered into and the said deeds were executed and delivered at the office of Alfred Russell, in the city of Detroit, who acted as attorney for both complainant and defendant, and complainant received and used the said notes for twenty thousand dollars, and the said transaction was intended to operate as a

security from complainant to defendant to secure to him the repayment of the said thirty thousand dollars and the interest thereon, and was so considered by both complainant and defendant.

4. At the time said agreement was entered into and the land transferred from complainant to defendant the financial affairs of the country were greatly depressed, and lands of this character, containing large quantities of pine timber, and valuable chiefly for the pine timber standing on them, were not in great demand, and both complainant and defendant knew that an adequate price therefor could not then be obtained; but it was well known to both parties that within a short time such timber land would greatly appreciate in
value, and that by continuing to hold said land until it should
26 rise in value they would be able to dispose of it at a price
much beyond the sum of thirty thousand dollars.

5. That complainant had estimates of the amount of timber standing on said land, and from the best advice he has been able to obtain alleges that there was upwards of forty million feet of timber at the time of the transactions aforesaid standing on said land, and that at the time said deeds were executed and delivered it was not, and never has been since that time, worth less than sixty thousand dollars, and is now worth from eighty to one hundred and twenty thousand dollars, or would be of that value if no timber had been cut therefrom.

6. That during the two years last past said property has become valuable, and it could have been readily sold for a sum sufficient to pay all of complainant's indebtedness to defendant and all moneys that defendant may have expended for taxes at any time during the past eighteen months.

7. That complainant, on the — day of ——, 1878, applied by letter from San Francisco, Cal., to defendant for an accounting of his doings in said matter, and received a reply that the land had not yet been sold, and consequently no account could be rendered; that later, and on the 4th day of February, 1881, complainant again applied to de-
fendant to settle and arrange the matters in some way, and
27 defendant then ignored and repudiated the entire transaction,
and stated to complainant that he knew of no unsettled transactions between complainant and defendant, except an indebtedness for ten thousand dollars from complainant to defendant; and complainant thereafter offered to pay the said Peter the sum of thirty thousand dollars, and the interest thereon, and any sums that might have been paid by said Peter for taxes or other proper expenses, and requested said Peter to release his said security and deed said land back to complainant.

8. And complainant further alleges that the said defendant has formed the purpose of refraining from exposing said land for sale, and in pursuance of such purpose has fraudulently refrained from exposing said land for sale or selling the same in accordance with the agreement entered into between complainant and defendant, and is thereby seeking to prevent an accounting with complainant and to retain to himself the entire — of said property.

9. That complainant is ready and willing to pay, and hereby

offers to pay, any sum that may be found due from complainant to defendant.

10. That the description of lands deeded by complainant to defendant and hereinbefore referred to, and which complainant seeks
to redeem from the lien of said equitable mortgage, is as fol-
28 lows: All those certain pieces or parcels of land in the county
of Newaygo and State of Michigan described as follows, to wit: In township fifteen north of range twelve west, in section two, the northwest quarter and the south half of the south half; entire section three; in section four, the southeast quarter and the north half; in section five, the south half; in section six, the south half: in section eight, the northwest quarter and the south half; in section nine, the north half; in section ten, the north half of the northeast quarter, the northeast quarter of the northwest quarter, and the southwest quarter of the northwest quarter; in section twelve, the entire section; in township sixteen north of range twelve west, in section eight, the west half of the southeast quarter; in section nine, the southwest quarter; in section twenty-one, the northeast quarter; in section twenty-two, the west half; entire section thirty-three; in section thirty-four, the south half.

That by reason of the premises complainant has been greatly injured and has no remedy at law, and therefore seeks the aid of this court and prays as follows:

1. That defendant may answer the premises, but without oath, answer under oath being expressly waived.

2. That an accounting may be had between complainant
29 and defendant, and that this court may find and determine
the amount of money due from complainant to defendant, or whether any sum remains to be paid, as well that secured by the said deed from complainant to defendant as any sum that may have been paid by defendant for taxes or other proper expenses upon said lands.

3. That this court may find and decree that the said deed, absolute in form, was an equitable mortgage intended by the parties as a security for money loaned and expenses to be incurred about said lands.

4. That complainant may be permitted to redeem said lands upon paying to said defendant the sum of money which shall be found by this court equitably due from complainant to defendant, and the court may thereupon order and direct said defendant to transfer said lands by a good and sufficient deed to complainant.

5. That complainant may have such other or further or different relief as may be proper and equitable.

6. That the usual subpœna may issue.

CHARLES C. CADMAN.

CHARLES F. BURTON,
Solicitor for Complainant.
C. I. WALKER,
Of Counsel.

30 UNITED STATES OF AMERICA,
Eastern District of Michigan, County of Wayne, } *ss:*

On this eighteenth day of April, A. D. 1881, before me, a commissioner of the circuit court of the United States for the eastern district of Michigan, — Charles C. Cadman, known to me to be the person named in and who subscribed the foregoing bill of complaint, and made solemn oath that he had read the said bill of complaint by him subscribed and knew the contents thereof, and the same are true of his own knowledge except as to those things therein stated to be upon information and belief, and as to those he believes it to be true.

HERSCHEL WHITAKER,
U. S. Commissioner, E. D. of Michigan.

[Endorsed:] No. 611. In the circuit court of the United States for the western district of Michigan. In equity. Charles C. Cadman *vs.* William Peter. Amended bill of complaint. Filed April 23, 1881. H. M. Hinsdill, clerk. Charles F. Burton, sol'r for comp. C. I. Walker, of counsel.

31 In the Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

CHARLES C. CADMAN, Compl't, *vs.* WILLIAM PETER, Def't.

The answer of William Peter to the bill of complaint of Charles C. Cadman, complainant.

This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exceptions to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much or unto such parts thereof as this defendant is advised is material for him to make answer unto, he, answering, says—

First. He admits making two notes for five thousand dollars each, which were made to the order of C. C. Cadman and made payable at the Merchants' and Manufacturers' Bank at Detroit, and delivered the same to the complainant for the purpose of enabling him to obtain money for his individual benefit, but alleges it was at an earlier date than stated in paragraph one of said bill of complaint, and neither admits nor denies that the rate of interest is correctly stated, nor that complainant paid the interest from time to time when said notes were renewed up until the 25th day of October, 1875, but leaves complainant to make proof as he may be 32 advised is material and necessary.

Second. Defendant, further answering, admits that complainant was seized and possessed of certain pine lands situated in the county of Newaygo, in the State of Michigan, as is stated in paragraph two of his bill of complaint, but denies that the land was then valued at upwards of forty thousand dollars, as therein stated; and this defendant denies that there were any negociations between him and the complainant which culminated in an agreement, as is set forth in said paragraph two of complainant's said bill of complaint; and this defendant denies that he ever made any arrangement or agreement with the said complainant, as is stated and set forth in the second paragraph of complainant's said bill of complaint, and denies each and every allegation contained in the second paragraph of said bill of complaint, except as above admitted.

Third. Further answering, this defendant denies that any agreement was made and entered into between complainant and defendant, as stated in the third paragraph of complainant's bill, and denies that the deed of said lands from complainant to defendant *were* received as security for money, as therein stated; and defendant denies each and every allegation contained in the third paragraph of complainant's bill.

33 Fourth. Further answering, this defendant admits that at the time he received his deed of the lands mentioned in said bill the affairs of the country were greatly depressed, and that the lands were valuable chiefly for the pine timber standing on them and were not in great demand, and that an adequate price therefor was difficult to be obtained, and this fact was well known to both complainant and defendant, and that it was expected by both parties that it would appreciate in value; but defendant denies that this was a matter that in the least should affect the complainant, as he was in no way or form to have any interest in said lands after the sale and deed to defendant was made.

Fifth. Further answering, this defendant neither admits nor denies that the complainant had estimates of the amount of timber standing on said land, and neither admits nor denies the amount or value of the timber standing and being on said lands, as charged in the fifth paragraph of complainant's bill, but positively denies that it is a matter that concerns the said complainant, as he has no interest therein, and has had no interest therein in any way or manner since he conveyed the same to the defendant.

Sixth. Further answering, this defendant admits that said property has become valuable since he purchased the same from
34 complainant, but denies that he holds the same in any way
by which it in the least affects the rights of complainant, and denies that he holds said land to secure any indebtedness from complainant to him.

Seventh. Further answering, this defendant denies that complainant at any time in the year 1878 applied to him by letter for an accounting of his doings in said matter, and that complainant received a reply that the land had not been sold, and consequently no account could be rendered, but neither admits nor denies that later and on the 4th day of February, 1881, the complainant applied to defendant to settle and arrange the matter in some way, as stated in the seventh paragraph of complainant's bill, and leaves complainant to make proof; but defendant denies that he was under any obligations to entertain any such application if the same was made in manner and form as therein stated.

Eighth. Further answering, the defendant denies each and every statement contained in the 8th paragraph of complainant's bill.

Ninth. Further answering, this defendant neither admits nor denies the statement contained in the ninth paragraph of complainant's said bill.

Tenth. Further answering, this defendant neither admits nor de-
nies that the lands conveyed to him by complainant are correctly
described in the tenth paragraph of complainant's bill, and leaves
complainant to make proof, but denies that said deed is or
35 should be treated as an equitable mortgage, and denies that
the complainant has been greatly injured, and denies that
the complainant has any interest, either equitable or legal, of,
in, or to any of said lands, and denies that he is entitled to have this
defendant account to him in any way or form for any of said lands,
and denies that he is entitled to the relief asked and prayed for in
his second, third, fourth, and fifth requests.

Eleventh. Further answering, by way of defense, this defendant says that on the 25th day of October, A. D. 1875, he purchased the lands described in the complainant's bill from the said complainant for the sum of twenty thousand dollars, that being the price agreed upon by and between the parties, and being a fair price therefor at the time, which said sum has long since been paid; and the complainant has never claimed to have any interest therein since said purchase, either equitably or otherwise, until a short time prior to the filing of his bill of complaint.

Twelfth. And this defendant claims and avers the fact to be that the said complainant has no lawful or equitable claim or interest in or to any of the lands described in his bill of complaint, nor is he in any way or manner entitled to have an accounting with the defendant for the profits or sales of any of the lands described in his said bill of complaint, as is prayed for therein.

This defendant, by protestation not confessing or acknowl-
36 edging any of the matters and things in the said complain-
ant's bill to be true in such manner and form as the same
are therein set forth and alleged, does demur thereto, and for cause
of demurrer showeth that the said complainant hath not in and by
said bill made or stated such a cause of action as does or ought to
entitle him to any such relief as is therein sought and prayed for
from and against this defendant.

And this defendant, further answering, denies all and all manner of unlawful combination and confederacy, as charged in said bill of complaint.

Without this that any other matter or thing material and necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge of this defendant.

All which matters and things this defendant is ready and willing to maintain and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WILLIAM PETER.

GEER AND WILLIAMS,
Sol'c'rs for Def't.

[Endorsed:] No. 611. Circuit court of U. S. for W. dist. Mich., southern div. In equity. Charles C. Cadman, compl't, *vs.* William Peter, def't. Def't's answer. Filed May 4, 1881. H. M. Hinsdill, clerk. Geer & Williams, sol'rs for def't.

37 The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

CHARLES C. CADMAN *vs.* WILLIAMS PETER.

The replication of Charles C. Cadman, complainant, to the answer of William Peter, defendant.

This repliant, saving and reserving to himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be taken to the manifold insufficiencies of the said answer, for replication thereunto say- that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of William Peter is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

38 Dated the sixth day of May, A. D. 1881.

CHARLES F. BURTON,
Solicitor for Complainant.

[Endorsed:] No. 611. Circuit court of the United States for the western district of Mich., southern division. In equity. Charles C. Cadman, complainant, *vs.* William Peter, defendant. Replication. Filed this 10th day of May, 1881. H. M. Hinsdill, clerk. Charles F. Burton, solicitor for complainant.

39 *Orders.*

THE UNITED STATES OF AMERICA, *ss:*

U. S. Court, Western District of Michigan, Southern Division. In Equity.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 27th day of April, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States of America the one hundred and sixth—present, the Honorable Solomon L. Withey, district judge—among the proceedings then and there had were the following, to wit:

Charles C. Cadman, Complainant,
vs.
William Peter, Defendant.

This cause came on to be heard upon pleadings and proofs, and the court, after hearing Charles F. Burton, Esq., and C. I. Walker, Esq., for complainant, and Harrison Geer and Ashley Pond. Esq's, for the defendant, took said cause into consideration.

40 The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

Charles Cadman *vs.* William Peter.

Charles F. Burton and C. I. Walker, for compl't; Harrison Geer and Ashley Pond, for def't.

The bill of complaint seeks to give to a deed the effect of a mortgage. In 1872 complainant borrowed of defendant his two promissory notes, payable to the order of Cadman, at ninety days, for five thousand dollars each; they were renewed by defendant from time to time for the accommodation of complainant. The last renewal was between the 15th and 20th of October, 1875, for the same time.

On the 25th of October, the bill states, defendant agreed to loan to complainant the additional sum of twenty thousand dollars, by the notes of defendant, payable at four and six months, and take a deed of 5,400 acres of land in Newaygo county owned by complainant, of the estimated value of upwards of forty thousand dollars, as security for the payment of both sums, ten thousand and twenty
thousand dollars. The deed, absolute in form, was executed
41 by complainant and wife and delivered to defendant on the
day last named, and at the same time defendant gave his notes to complainant for twenty thousand dollars, the consideration named in the deed.

The bill of complaint states the balance of the agreement as follows:

"Peter was to hold said land until such time as it might be sold at a profit or for a greater sum than could be then realized, and when such time should come was to sell said land in the most advantageous manner possible and out of the proceeds pay himself the said sums of ten and twenty thonsand dollars and interest and the taxes and divide the surplus, if any."

The prayer is for an accounting that the deed may be found to be an equitable mortgage and that complainant may redeem. The answer denies the agreement to loan twenty thousand dollars; denies that the deed was given as security, and states that defendant purchased the land from complainant for the consideration of twenty thousand dollars, for which sum he gave his notes, and long since paid them. The answer denies that complainant has any interest whatever in the land, legal or equitable, and says that complainant has not stated in his bill of complaint a cause of action. Complainant was at the time of the alleged agreement cashier in a bank in Detroit, and Peter was a lumber dealer in Toledo.

42 The case is an important one to the parties, and has been carefully considered as to the legal questions and the facts presented by the record. The first consideration relates to the nature of the transaction, whether the bill states a case which turns the deed into a mortgage or mere security. Wherever there is a mortgage there is a right in the mortgagor or grantor to redeem the thing mortgaged. It need not be expressed, for the right to redeem will be implied wherever it is shown that property is transferred or pledged as security, unless the nature of the agreement forbids such implication.

The agreement set out in the bill of complaint and testified to by complainant is in effect that Peter should take a deed of the land, effect a sale, and pay to Cadman one-half of the proceeds, after deducting the purchase-price or consideration, thirty thousand dollars, and the taxes and interest. Such an agreement is inconsistent with the right to redeem. Peter, by the agreement, was entitled to hold the land until sold by him and then share in any profit he might obtain, rights wholly inconsistent with the idea that Cadman could redeem. This being the agreement of the parties, allowing it to be valid, the deed cannot be turned into a mortgage. Defendant's counsel cited Baker *vs.* Thurber, 4 Denis, 493; McCauley *vs.* Porter, 71 N. Y., 173.

43 The appropriate remedy would seem to be to compel the grantee to execute his agreement whenever a sale of the land can be made at a considerable profit. If, on the other hand, such agreement is obnoxious to the section of the statute of frauds declaring that no trust concerning or in any manner relating to land shall be created by parol, then the agreement cannot be enforced specifically nor employed to turn this deed into a mortgage security. Compiled Laws of 1871, sec. 4692; see Saunderson *vs.* Graves, 13 Eng. Rep., 364 (Law Rep'ts Com. Pl., 234).

Emerson *vs.* Atwater, 7 Mich. R., 12, cited by complainant's counsel, is distinguishable from this case. The agreement there was that the grantee might sell the land to pay the indebtedness of the grantor to the grantee, but the latter was to reconvey whatever land remained unsold, and if the grantor should pay the debt all the land was to be reconveyed. There an express right to redeem was reserved.

In my judgment, the agreement, if valid, would make Cadman a beneficiary under the deed, and created a trust in Peter concerning or relating to land, and, not being in writing and properly signed, is void under the statute of frauds; but, under the evidence, complainant is not, in my opinion, entitled to relief, conceding his bill to state a good case.

44 It is insisted for complainant and proved that Cadman and Peter held and had for years intimate and confidential relations; that Cadman was in great need of money, a fact known to Peter; that Cadman endeavored to effect a loan upon the land as security, and was unsuccessful, of which Peter was informed; and

that Cadman had estimates of the value of the land, which led him to regard it worth largely in excess of twenty thousand dollars, though in July previous he had purchased the land for about twenty thousand dollars. Neither Cadman nor Peter had seen the land, and pine lands were not in much demand at that time—October, 1875. It must be said that Mr. Cadman's testimony supports the material allegations of the bill of complaint, and there is an item of testimony strongly corroborating the case of the complainant. Mr. Russell testifies that when the parties came to him to have the deed drafted Peter said, in substance, that he was going to take the land as security and let Cadman have twenty thousand dollars in addition to ten thousand he already had, but wanted a deed, so that he, Peter, could control the land. On the theory that the bill states a good case, I should regard the proof sufficient, in the absence of other and control-ing testimony, to overcome the *prima facie* effect due to the absolute form of the deed, although the testimony
45 of a witness who speaks from recollection of a conversation
after five or six years have elapsed is often not the safest evidence on which to form opinions. We are all conscious of the imperfection of our memory, and that our recollection of what we have heard said is apt to get mixed and misplaced, especially if we have heard statements on the same subject from different persons. It is familiar that mere recollection, unaided by written memorandum, is entitled to very much less weight than written declarations made at or about the time, and the written declarations of the parties, to which I shall refer, are, to my mind, wholly inconsistent with any such statement having been made by Peter as that he took the deed as security. I shall briefly call attention now to the facts which control my judgment.

1. The conveyance of the land was by a deed absolute on its face, for the expressed consideration of twenty thousand dollars; to overcome the effect of which deed and turn it into a mortgage the evidence must be clear and convincing beyond reasonable controversy.

2. Peter gave back a mortgage to Cadman of the same date as the deed to secure payment of the notes given for the purchase price named, twenty thousand dollars. This mortgage was given
46 by one party and accepted by the other; it therefore speaks
for both of them. It may not be conclusive, but in the absence of fraud a mortgage back at the time of a conveyance ought to be nearly so, as a contemporaneous writing expressive of the intention of the parties. It adds to the effect of the deed as evidence that there was an absolute sale.

3. January 21st Cadman wrote to Peter, in substance, that he had drawn on the latter at one day's sight to take up one of two five-thousand-dollar notes due that day, which Cadman could not get extended by renewal. The two five-thousand-dollar notes alluded to are continuations of the accomodation paper loaned in 1872 by Peter for Cadman's benefit, and, according to Cadman's testimony, were secured, together with the twenty thousand dollars, by the deed to Peter. Peter had forwarded new notes to enable Cadman to retire the previous ones, then about to fall due, and Cadman says in

his letter that he had lodged one of the new notes as collateral to his draft. The draft directed the amount to be charged to Cadman's account; Peter replied January 22nd, in which he says: "I accepted your draft this morning. What do you think of making a draft on me at one day for $5,000? This shows for itself how my notes are peddled in Detroit. Let me know if I must raise the money to pay this draft. I want you to send me something to show that
47 the two notes and this draft are for your benefit and for you
to pay." Cadman testified that it was part of the arrangement when the deed was executed that Peter was to pay the said two notes. Would Peter have written in the manner he did if those notes were for him to pay, and Cadman had secured him for the amount? And why should Cadman be asked to give "something" to show that Peter had no right to ask? Cadman replied January 24th, "I am sorely mortified and grieved that this should be the case, but I am entirely powerless to act. I will do anything in my power; I will send you my notes or anything I have." We do not understand why Cadman should acquiesce in Peter's demand for some writing to show that Cadman was to pay the paper, and that it was for his benefit, unless Cadman so understood the fact. This occurred only three months after the date of the deed and alleged agreement.

Again, January 30th, Cadman's pecuniary affairs had reached a climax, and he wrote Peter:

"I return your note for $5,000 herein. I cannot use it, except to discredit you still more. I owe so much money outside I cannot stand the pressure; I am ruined and penniless. I console myself in your case that the great bargain you made in the Newaygo lands will in some great measure compensate you for the loss you
48 must incur, for I cannot take care of the acceptance due early
in February."

This acceptance was by Cadman of a draft drawn on him by Peter to pay the amount of the previous draft of Cadman on Peter at one day's sight, & was for $5,000. Cadman returned one of the $5,000 notes, which he did not use, and this left outstanding of the accommodation paper the acceptance and one note, aggregating ten thousand dollars, beside the notes for twenty thousand dollars given to Cadman at the date of the deed and which had not yet matured. I am unable to reconcile the statement of this letter with Cadman's version of the understanding as to the purpose of the deed. He recognizes the fact that Peter had made "a great bargain" in the land in question, a bargain likely to compensate in a great measure the loss Peter must incur on account of Cadman. How had Peter made "a great bargain" in this land unless by the purchase of it and then selling for more than it cost? If Cadman had a beneficial interest, a right to redeem, or any sort of interest in the lands or in the proceeds of their sale, would he have made the statements of the letter? In his testimony he claimed the land to be worth at that time a large sum in excess of the amount he had received Peter's paper for; if the deed was understood to be security there was no reason-
49 able ground for loss to Peter. No man of common prudence

and understanding would have written such a letter while he regarded himself as the owner, in equity, of or as having a valuable beneficiary interest in the land.

A decree will be entered dismissing the bill of complaint for want of merits.

[Endorsed:] No. 611. U. S. circuit court. In equity. Charles Cadman *vs.* William Peter. Opinion of S. L. Withey, dist. judge, June 10, 1882, dismissing bill for want of merits. Bill to turn a deed into a mortgage. Filed June 10, 1882. H. M. Hinsdill, clerk.

50 *Orders.*

THE UNITED STATES OF AMERICA, *ss:*

U. S. Court, Western District of Michigan, Southern Division. In Equity.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids on the 13th day of June, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States of America the one hundred and sixth—present, the Honorable Solomon L. Withey, district judge—among the proceedings then and there had were the following, to wit:

CHARLES C. CADMAN, Complainant,
vs.
WILLIAM PETER, Defendant.

This cause having been brought on to be heard on pleadings and proofs taken therein, and after reading the pleadings and proofs and hearing the argument of counsel, and after due consideration thereof, it is ordered, adjudged, and decreed, and this court, by virtue of the power and authority therein vested, doth order, adjudge, and decree, that the said bill of complaint be, and the same is hereby, dismissed.

And it is further ordered, adjudged, and decreed that the said defendant, William Peter, do recover from said complainant his costs to be taxed in this cause, and that he have execution therefor.

51 *Defendant's Bill of Costs.*

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Sixth Circuit and Western District of Michigan. Southern Division.

CHARLES C. CADMAN, Complainant,
vs.
WILLIAM PETER, Defendant.

Solicitor'- fee by statute	$20 00
Marshal's fees	
Clerk's fees	10 00

Examiner or com'r's fees	$51 00
Master's fees	
Printer's bill, (not included in above,) 216 pages @ 45 cts. a page	97 20
Register of deeds, (not included in above,)	

Witnesses' fees:

	Miles travel.	Days.		
Henry N. Walker	1	1	$1 10	
William A. Butler	1	1	1 10	
Frederick W. Hayes	1	1	1 10	
				3 30
Affidavit to fee bill				
Total				$181 50

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } *ss:*

I hereby tax the foregoing bill of costs at the sum of one hundred eighty-one & $\frac{50}{100}$ dollars.

Dated June 27, 1882.

HENRY M. HINSDILL, *Clerk.*

52 THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } *ss:*

Harrison Geer, being duly sworn, says that the foregoing items of cost charged as disbursements have actually been paid, or the liability therefor incurred, and were necessary and are reasonable in amount; that the witnesses above named were in good faith made to attend and were deemed material and necessary, and they respectively traveled the number of miles, and actually attended the number of days specified, and that the copies and exemplifications charged for were actually and necessarily used, or necessarily and in good faith obtained for use.

HARRISON GEER.

Sworn to and subscribed before me this 21st day of June, A. D. 1882.

FRANK HICKS,
Notary Public, Lapeer Co., Mich,

To —— ——, —— for ——.

Take notice that the foregoing is a copy of the —— bill of costs, proposed to be taxed, and of the affidavits to be read in support thereof; and that application will be made to the clerk of the said court to tax the same, at his office, on the — day of ——, A. D. 188–, at — o'clock — m.

Dated this — day of ——, A. D. 188–.

—— ——,
—— *for the* ——.

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } *ss:*

—— ——, being duly sworn, says that on the — day of ——, A. D. 188–, at — o'clock — m., he served a copy of the above bill of costs, affidavit, and notice of application for taxation upon —— for the —— by ——.

—— ——.

Sworn to and subscribed before me this — day of ——, A. D. 188–.

—— ——,
—— ——.

I consent to the taxation of the within bill of costs at the sum of one hundred & eighty-one dollars and fifty cents, on condition, however that ——.

Dated this twenty-fourth day of June, A. D. 1882.

C. F. BURTON,
Sol'r for Compl't.

[Endorsed:] No. 611. Circuit court of the United States for the sixth circuit and western district of Michigan, southern division. Charles C. Cadman, compl't, *vs.* William Peter, defendant. Taxed bill of costs. Defendant's costs taxed at $181.50. Filed June 27, A. D. 1882. H. M. Hinsdill, clerk. Geer & Williams, sol'rs for def'ts.

53 Circuit Court of the United States for the Western District of Michigan. In Equity.

CHARLES C. CADMAN *vs.* WILLIAM PETER.

And now comes the said complainant and appeals from the decree of said court, heretofore rendered in this cause, to the Supreme Court of the United States.

The appellant prays that the bill and all other proceedings may be sent to said Supreme Court, to the end that said cause may be heard anew, and such decree obtained as to such Supreme Court shall seem just.

CHARLES F. BURTON,
Solicitor for Complainant.
C. I. WALKER,
Of Counsel.

[Endorsed:] No. 611. Circuit court of the United States for the western district of Mich. In equity. Charles C. Cadman *vs.* William Peter. Precipe for appeal. Filed June 29, '82. H. M. Hinsdill, clerk. Charles F. Burton, sol'r for compl't.

54 *Orders.*

THE UNITED STATES OF AMERICA, *ss:*

U. S. Court, Western District of Michigan, Southern Division. In Equity.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan begun and held at the city of Grand Rapids on the 29th day of June, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States of America the one hundred and sixth—present, the Honorables Stanley Matthews, associate justice Supreme Court U. S., and Solomon L. Withey, district judge—among the proceedings then and there had were the following, to wit:

CHARLES CADMAN, Complainant,
vs.
WILLIAM PETER, Defendant.

The complainant in this cause, by Charles F. Burton, his solicitor, now comes and claims in open court an appeal to the Supreme Court of the United States.

It is thereupon ordered that the same be, and hereby is, allowed; and further ordered that said complainant shall file a good and sufficient bond, in the sum of five hundred dollars ($500.00), on appeal to the Supreme Court, which bond, when so allowed and approved, shall operate as a superced-as.

55 In the Circuit Court of the United States for the Western District of Michigan. In Chancery.

CHARLES C. CADMAN, Complainant,
vs.
WILLIAM PETER, Defendant.

Testimony taken before Herschel Whitaker, U. S. commissioner, at his office in the city of Detroit, on the 24th day of May, A. D. 1881, at two o'clock p. m.

At this hearing Mr. Charles F. Burton appeared on behalf of complainant; Mr. Harrison Geer, on behalf of defendant.

56 ALBERT STEELE, a witness produced, sworn, and examined on behalf of complainant, testifies as follows:

Examined by Mr. BURTON:

Q. State your name, age, residence, and occupation.

A. My name is Albert Steele; my residence at this time is 250 West Fort street, Detroit; my age is forty-three. Well, what else do you want to know?

Q. Occupation?

A. Real estate and lumber.

Q. Are you intending to remain here or are you about to leave the city?

A. I am going away.

Q. Whereabouts—to Wisconsin?

A. I am going to Wisconsin and the upper peninsula of Michigan.

Q. Intend to make that your future residence?

A. Yes, sir.

Q. And intend to remove very soon?

A. I am going away probably Friday morning of this week, if not sooner.

Q. Do you know Mr. Cadman?

A. Yes, sir.

Q. Do you know Mr. Peter?

A. I do not.

Q. How long have you known Mr. Cadman?

A. Oh, I guess sixteen to twenty years; I don't remember exactly.

Q. Do you know certain land in Newaygo county that Mr. Cadman owned in 1875? Do you know of it?

A. Yes, sir.

57 Q. Do you know about how much there was of it?

A. About how many acres?

Q. Yes.

A. Well, I think there is something over five thousand acres.

Q. Could you recognize the description?

A. Yes; I think I could recognize the map better than the description.

Q. Do you know what section it is in?

A. Ordinarily, no; I can't remember.

Q. Have you had shown to you the description in this bill of complaint, in the case of Cadman *vs.* Peter, in the western district of Michigan?

A. I think I have.

Q. Do you know whether that is the land? Look at it in this small sketch.

A. That I would know better if I compared it with the map. I have not done that. I have seen descriptions in the bill of complaint, but I have not compared them with the map.

Q. You know that land on the sketch you now hold in your hand?

A. Yes, sir.

The sketch referred to is introduced in evidence on behalf of complainant and marked "Exhibit A."

Q. Do you know whether those are the lands purchased from Milton D. Ward or not?

A. I do not. I think they were, but I don't know.

58 Q. Did you have anything to do with reference to this land in 1875?

A. Yes, sir.

Q. What was it?

A. I offered those lands for sale.

Q. To whom?

A. In Buffalo.

Q. For whom?
A. For Mr. Cadman.
Q. Did you obtain any offer for them?
A. Yes, sir.

Objected to as incompetent and irrelevant.

Q. Did you form any estimate as to what the value of them was?
A. Yes, sir.
Q. What was your estimate?
A. My estimate was that they were worth two dollars to the thousand, according to the estimates. At least they should sell readily for two or one and a half.
Q. Do you know what the estimate was?
A. About forty millions.
Q. That would bring them from sixty to eighty thousand dollars?
A. Yes; I think they were worth eighty thousand, or cheap at sixty.
Q. Now, will you state whether you did get an offer for them in Buffalo?
A. I did.

Same objection.

59 Q. Of how much?
A. I received a cash offer of thirty thousand dollars.
Q. What did Mr. Cadman do about accepting that offer?
A. He refused it.
Q. Did you have any influence with him in getting him to refuse it; advise him about it any in way?
A. I did.
Q. Advise him whether that was a sufficient price or not?
A. I advised him not to accept it by any means.
Q. Why did you give him that advice?
A. Simply because I knew they were worth more if there was forty million there.
Q. Do you remember whether you made a written statement of the value you put on them?
A. I do not; I might have done so, but I don't remember.

Cross-examination by Mr. Geer:

Q. Have you ever seen the lands yourself?
A. No, sir.
Q. Then whatever estimates you made or placed upon them you got from estimates made by other parties than yourself?
A. I did.
Q. You know nothing of the character or quality of the pine of your own knowledge?
A. My estimate I put on was if there was forty million of pine it was worth so much.
60 Q. But you know nothing as to what the quantity or quality was of your own knowledge?
A. No, sir.

Q. And what time do you say this was in 1875?

A. Oh, it was perhaps from the first to the middle of August. I can't remember exactly, but perhaps the first of September; but it was during one of my trips to Buffalo.

Q. What parties did you go and see?

A. My brother-in law.

Q. What's his name?

A. James H. Lee.

Q. Did he come here to examine the lands?

A. No, sir.

Q. Were you in any way interested with Mr. Cadman at that time.

A. In no way, shape, manner, or form.

Q. How long have you resided in Detroit?

A. How long have I?

Q. Yes.

A. Well, I was born here, then I went away lumbering in the upper part of Michigan, then I came back here, then I went up there again in the western part, near where these lands are; lumbered there five or six years, then I came back here and I think possibly my last stay here has been twelve years.

Q. Have you been off and on here ever since?

A. Ever since I was born.

Q. About what portion of the time have you been engaged in lumbering?

61 A. About twenty-seven years.

Q. On your own hook or for other parties?

A. Both.

Redirect examination:

Q. You had lumbered in the vicinity of these lands?

A. Yes, sir.

Q. And knew the general character of the lumber and pine in that vicinity?

A. Yes, I know the estimator of those lands. One thing I based my opinion upon, he has estimated a great many lands for me; that was one reason.

Q. Who was the estimator?

A. Mr. Rankin. As it was represented to me, I understood it was Mr. Rankin.

Q. Do you know his first name?

A. No, I cannot recall it.

Q. Do you know where he lives.

A. He used to live here. He may possibly be at Grand Rapids or Big Rapids now, possibly; I don't know.

(Signed) A. M. STEELE.

62 In the Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

Complainant, Charles C Cadman, who is a citizen and resident of San Francisco, — the State of California, brings this his amended bill of complaint against William Peter, who is a citizen of Ohio and a resident of the city of Toledo, in said State, and alleges as follows:

63 1. About the year 1874 or 1875 complainant became indebted to defendant to the amount of ten thousand dollars, for money borrowed of defendant by complainant; that such indebtedness arose by said defendant making his notes, two in number and for the sum of five thousand dollars each, payable to complainant, and drawing interest at the rate of seven per cent. per annum, and delivering the same to complainant, to be by him endorsed and used for the purpose of obtaining money for complainant's benefit, and that complainant did so endorse and use them; that said notes were for short time, but that as they came due they were from time to time renewed, complainant paying up the accrued interest at each renewal until the twenty-fifth day of October, 1875, hereinafter referred to.

2. Upon the twenty-fifth day of October, 1875, complainant was seized and possessed of five thousand four hundred acres of land, covered with valuable pine timber and situated in the county of Newaygo, in the State of Michigan and in the western district of said State, which land was then valued at upwards of forty thousand dollars; that complainant was anxious to procure further sums of money, and applied to said Peter to furnish him the further sum of twenty thousand dollars, and that the negotiations with said Peter culminated in an agreement substantially as follows:

In addition to the sum of ten thousand dollars already loaned by complainant the defendant agreed to advance and loan to complainant the further sum of twenty thousand dollars, to be furnished by two notes of ten thousand dollars each, and complainant was thereupon to execute and deliver a deed of said land to said Peter as security for all the before-mentioned advances, and the said Peter was to hold said land until such time as it might be sold at a 64 profit or for a greater sum than could be then realized, and when such time should come was to sell said land in the most advantageous manner possible, and out of the proceeds arising from such sale was to pay himself the said sums of ten and twenty thousand dollars, and interest thereon at the rate of seven per cent. per annum, and the taxes on said lands that he should have paid, and should divide the surplus, if any, paying over to complainant one-half and retaining the other half of the surplus to recompense him for his labor, trouble, and expense in and about the sale and disposal of said property.

3. That this agreement was entered into and the said deeds were executed and delivered at the office of Alfred Russell, in the city of Detroit, who acted as attorney for both complainant and defendant, and complainant received and used the said notes for twenty thousand dollars, and the said transaction was intended to operate as a security from complainant to defendant to secure to him the repayment of the said thirty thousand dollars and the interest thereon, and was so considered by both complainant and defendant.

4. At the time said agreement was entered into and the land

transferred from complainant to defendant the financial affairs of the country were greatly depressed, and lands of this character, containing large quantities of pine timber, and valuable chiefly for the pine timber standing on them, were not in great demand, and both complainant and defendant knew that an adequate price therefor could not then be obtained; but it was well known to both parties that within a short time such timber land would greatly appreciate in value, and that by continuing to hold said land until it should rise in value they would be able dispose of it at a price much beyond the sum of thirty thousand dollars.

65 5. That complainant had estimates of the amount of timber standing on said land, and, from the best advice he has been able to obtain, alleges that there was upwards of forty millon feet of timber at the time of the transaction aforesaid standing on said land, and that at the time said deeds were executed and delivered it was not and never has been since that time worth less than sixty thousand dollars, and is now worth from eighty to one hundred and twenty thousand dollars, or would be of that value if no timber had been cut therefrom.

6. That during the two years last past said property has become valuable, and it could have been readily sold for a sum sufficient to pay all of complainant's indebtedness to defendant and all moneys that defendant may have expended for taxes at any time during the past eighteen months.

7. That complainant on the — day of ——, 1878, applied by a letter from San Francisco, California, to defendant for an accounting of his doings in said matter, and received a reply that the land had not yet been sold, and consequently no account could be rendered; that later and on the fourth day of February, 1881, complainant again applied to defendant to settle and arrange the matter in some way, and defendant then ignored and repudiated the entire transactions, and stated to complainant that he knew of no unsettled transactions between complainant and defendant except an indebtedness for ten thousand dollars from complainant to defendant, and complainant thereafter offered to pay the said Peter the sum of thirty thousand dollars and the interest thereon and any sums that might have been paid by said Peter for taxes or other proper expenses, and requested said Peter to release his said security and deed said land back to complainant.

66 8. And complainant further alleges that the said defendant has formed the purpose of refraining from exposing said land for sale, and in pursuance of such purpose has fraudulently refrained from exposing said land for sale or selling the same in accordance with the agreement entered into between complainant and defendant, and is thereby seeking to prevent an accounting with complainant, and to retain to himself the entire of said property.

9. That complainant is ready and willing to pay, and hereby offers to pay, any sum that may be found due from complainant to defendant.

10. That the description of lands deeded by complainant to de-

fendant, and hereinbefore referred to, and which complainant seeks to redeem from the lien of said equitable mortgage, is as follows:

All those certain pieces or parcels of land, in the county of Newaygo and State of Michigan, described as follows, to wit: In township fifteen north, of range twelve west—in section two, the northwest quarter and the south half of the south half; entire section three; in section four, the southeast quarter and the north half; in section five, the south half; in section six, the south half; in section eight, the northwest quarter and the south half; in section nine, the north half; in section ten, the north half of the northeast quarter, the northeast quarter of the northwest quarter, and the southwest quarter of the northwest quarter; in section twelve, the entire section; in township sixteen north, of range twelve west—in section eight, the west half of the southeast quarter; in section nine, the southwest quarter; in section twenty-one, the northeast quarter; in section twenty-two, the west half; entire section thirty-three; in section thirty-four, the south half.

67 That by reason of the premises complainant has been greatly injured and has no remedy at law, and therefore seeks the aid of this court and prays as follows:

1. That defendant may answer the premises, but without oath, answer under oath being expressly waived.

2. That an accounting may be had between complainant and defendant, and that this court may find and determine the amount of money due from complainant to defendant, or whether any sum remains to be paid, as well as that secured by the said deed from complainant to defendant as any sum that may have been paid by defendant for taxes or other proper expenses upon said lands.

3. That this court may find and decree that the said deed absolute in form was an equitable mortgage, intended by the parties as a security for money loaned and expenses to be incurred about said lands.

4. That complainant may be permitted to redeem said lands upon paying to said defendant the sum of money which shall be found by this court equitably due from complainant to defendant, and the court may thereupon order and direct said defendant to transfer said lands by a good and sufficient deed to complainant.

5. That complainant may have such other or further or different relief as may be proper and equitable.

6. That the usual subpœna may issue.

CHARLES C. CADMAN.

CHARLES F. BURTON,
Solicitor for Complainant.
C. I. WALKER,
Of Counsel.

68 UNITED STATES OF AMERICA,
Eastern District of Michigan, County of Wayne, } *ss:*

On the eighteenth day of April, A. D. 1881, before me, a commissioner of the circuit court of the United States for the eastern district of Michigan, personally appeared Charles C. Cadman, known to me to be the person named in and who subscribed the foregoing bill of complaint, and made solemn oath that he had read the said bill of complaint by him subscribed, and knew the contents thereof, and the same are true of his own knowledge except as to those things therein stated to be upon information and belief, and as to those he believes it to be true.

HERSCHEL WHITAKER,
U. S. Commissioner, E. D. of Michigan.

The Answer of William Peter to the Bill of Complaint of Charles C. Cadman, Complainant.

In the Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

To said court:

This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, he, answering, says:

69 1. He admits making two notes for five thousand dollars each, which were made to the order of C. C. Cadman, and made payable at the Merchants' Manufacturing Bank at Detroit, and delivered the same to the complainant for the purpose of enabling him to obtain money for his individual benefit, but alleges it was at an earlier date than stated in paragraph one, aforesaid bill of complaint, and neither admits nor denies that the rate of interest is correctly stated, nor that complainant paid the interest from time to time when said notes were renewed up until the twenty-fifth day of October, 1875, but leaves complainant to make proof as he may be advised is material and necessary.

2. Defendant, further answering, admits that complainant was seized and possessed of certain pine lands situated in the county of Newaygo, in the State of Michigan, as is stated in paragraph two of his bill of complaint, but denies that the land was then valued at upwards of forty thousand dollars, as therein stated, and this defendant denies that there was any negotiation between him and the complainant which culminated in an agreement, as is set forth in said paragraph two of the complainant's said bill of complaint, and this defendant denies that he ever made any arrangements or agreements with the said complainant, as is stated and set forth in the second paragraph of complainant's said bill of complaint, and denies each and every allegation contained in the second paragraph — aforesaid bill of complaint, except as above admitted.

3. Further answering, this defendant denies that any agreement was made and entered into between complainant and defendant, as stated in the third paragraph of complainant's bill, and denies that

the deed of said lands from the complainant to defendant 70 were received as a security for money, as therein stated, and defendant denies each and every allegation contained in the third paragraph of complainant's bill.

4. Further answering, this defendant admits that at the time he received his deed of the lands mentioned in said bill the affairs of the country were greatly depressed, and that the lands were valuable chiefly for the pine timber standing on them, and were not in great demand, and that an adequate price therefor was difficult to be obtained, and this fact was well known to both complainant and defendant, and that it was expected by both parties that it would appreciate in value; but defendant denies that this was a matter that in the least should affect the complainant, as he was in no way or form to have any interest in said lands after the sale and deed to defendant were made.

5. Further answering, this defendant neither admits nor denies that the complainant had estimates of the amount of timber standing on said land, and neither admits nor denies the amount or value of the timber standing and being on said lands, as charged in the fifth paragraph of complainant's bill, but positively denies that it is a matter that concerns the said complainant, as he has no interest therein, and has had no interest therein in any way or manner since he conveyed the same to the defendant.

6. Further answering, this defendant admits that said property has become valuable since he purchased the same from complainant, but denies that he holds the same in any way by which it in the least affects the rights of complainant, and denies that he holds said land to secure any indebtedness from complainant to him.

71 7. Further answering, this defendant denies that complainant at any time in the year 1878 applied to him by letter for an accounting of his doings in said matter, and that complainant received a reply that the land had not yet been sold, and consequently no account could be rendered, but neither admits nor denies that later and on the fourth day of February, 1881, the complainant applied to defendant to settle and arrange the matter in some way, as is stated in the seventh paragraph of complainant's bill, and leaves complainant to make proofs, but defendant denies that he was under any obligations to entertain any such application if the same was made in manner and form therein stated.

8. Further answering, this defendant denies each and every statement contained in the eighth paragraph of complainant's bill.

9. Further answering, this defendant neither admits nor denies the statement contained in the ninth paragraph of complainant's said bill.

10. Further answering, this defendant neither admits nor denies that the lands conveyed to him by complainant are correctly described in the tenth paragraph of complainant's bill, and leaves complainant to make proofs, but denies that said deed is or should be treated as an equitable mortgage, and denies that the complainant has been greatly injured, and denies that the complainant has any interest, either equitable or legal, of, in, or to any of said lands,

and denies that he is entitled to have this defendant account to him in any way or form for any of said lands, and denies that he is entitled to the relief asked and prayed for in his second, third, fourth, and fifth requests.

11. Further answering, by way of defense, this defendant says that on the twenty-fifth day of October, 1875, he purchased 72 the lands described in the complainant's bill from the said complainant for the sum of twenty thousand dollars, that being the price agreed upon by and between the parties and being a fair price therefor at that time, which said sum has long since been paid, and the complainant has never claimed to have any interest therein since said purchase, either equitably or otherwise, until a short time prior to the filing of his bill of complaint.

12. And this defendant claims and avers the fact to be that the said complainant has no lawful or equitable claim or interest in or to any of the lands described in his bill of complaint, nor is he in any way or manner entitled to have an accounting with this defendant for the profits or sales, if any, of the lands described in his said bill of complaint, as is prayed for therein.

This defendant by protestation, not confessing or acknowledging any of the matters and things in the said complainant's bill to be true in such manner and form as the same are therein set forth and alleged, *as* demur thereto, and for cause of demur- showeth that the said complainant hath not in and by said bill made and stated such a cause of action as does or ought to entitle him to any such relief as is therein sought and prayed for from and against this defendant.

And this said defendant, further answering, denies all and all manner of unlawful combination and conspiracy as charged in said bill of complaint.

Without this, that any other matter or thing material and necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the best knowledge and belief of this defendant.

All which matters and things this defendant is ready and 73 willing to maintain and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WILLIAM PETER.

GEER & WILLIAMS,
Solicitors for Defendant.

74 Testimony taken at the office of Herschel Whitaker, U. S. commissioner, on June first, 1881, at two o'clock p. m.

At this hearing Mr. Charles I. Walker appeared on behalf of complainant, and Mr. Harrison Geer on behalf of defendant.

CHARLES C. CADMAN, the complainant in the above-entitled cause, then appeared as a witness on his own behalf, and after being duly sworn testified:

Q. When did you first become acquainted with Mr. Peter, the defendant?

A. In 1868 or 1869, I think, sir; that is, I knew him before that, but I never knew him very well until 1868 or 1869, 1870, 1868, 1869.

Q. Where did you first become acquainted with him?

A. In Detroit.

75 Q. What was your business at that time?

A. I was connected with one of the banks.

Q. What bank?

A. The Merchants' and Manufacturers' Bank.

Q. And was it there you became acquainted with him, in that bank?

A. I think I had a speaking acquaintance with him before; I never knew him very intimately in business relations before that time.

Q. What relation did he hold to that bank?

A. He was a stockholder in that bank.

Q. What were you?

A. I was cashier.

Q. Will you state how it was about your acquaintance being intimate and familiar?

A. We became acquainted by our business relations, I as an officer and he as a depositor, a customer of the bank.

Q. Did he do considerable business at the bank?

A. Yes, sir.

Q. Did you, at that time or soon after, have any particular personal relations with him, representing him in any way? Just look at that proxy and see. (Handing paper to witness.)

A. Yes; I had his power of attorney to vote his shares of the bank.

The paper referred to is marked Exhibit 2, and is offered in evidence, and objected to as immaterial and irrelevant, and is hereto attached.

Q. Did you have any other individual business with him, and when?

76 A. I remember nothing especial at that time.

Q. Well, soon after did you borrow any money or credit of him?

A. Yes, sir.

Q. When was the first instance?

A. I think it was in 1872 or 1873; I don't remember exactly what date; 1872, I think.

Q. What was the transaction?

A. He loaned me his paper—two notes at $5,000 each.

Q. What kind of paper—whether long or short?

A. His note at three months.

Q. Were the notes renewed?

A. Yes, from time to time; every three months they were renewed if used. Sometimes they were not used—used for my benefit by me.

Q. State what obligation you gave him, if any.

A. An agreement to pay them, save him harmless from loss.

Q. Were those notes or the renewals of them in existence in October, 1875?

A. They were.

Q. When did you buy the land described in the bill in this cause?

A. In July, 1875.

Q. Of whom?

A. Of Milton D. Ward.

Q. At the time you made the purchase did you get any estimates of their value?

A. Yes, sir; I did.

Q. And from whom?

77 A. From George S. Frost & Co. and Milton D. Ward himself. The value was certified by George S. Frost & Co.

Q. The value of the lands?

A. The value of the lands; yes, sir. The value of the land was estimated by Mr. Rankin.

Q. You say Mr. Ward also made statements?

A. Yes, sir; he furnished the estimates made by Rankin, and I had them certified to, as regard their value, by George S. Frost & Co.

Q. What did you know at that time about any timber having been cut upon it?

A. I was told that there had been some timber cut off a portion of it. He showed me the contract he had with a Chicago house with regard to the operation on it and the number of feet cut, and a deduction was made from the estimates of the amount cut.

Q. Do you remember the estimates of the amount of timber upon the land?

Mr. GEER: I suppose the paper would be the better evidence.

Mr. WALKER: Yes; we have given you a notice to produce that. The estimate is in Mr. Peter's hands.

Objected to as incompetent, the estimates being the better evidence and being in writing.

Q. Will you state about what they were?

A. About forty-nine million altogether. Deducting what was cut off, it would leave about forty million, if I recollect positively about it, and I think I am quite right about it

Q. Were any statements made to you by Mr. Ward at the time as to what portion of this hadn't been cut?

78 Objected to as incompetent.

Q. Will you look at that memorandum and see if he made any statement? (Showing paper to witness.)

A. Mr. Ward gave me this memorandum in connection with the purchase.

Q. Do you know that to be in Mr. Ward's handwriting?
A. Yes, sir.
Q. You received it from him at the time?
A. Yes, sir.
Q. Read it.
A. "In Michigan, good pine land uncut, unburned, clear of everything, thirty-six hundred acres." But there was fifty-four hundred acres in the contract, and he stated there could be a good deal of pine cut from the fourteen hundred acres left, but a portion of it had been cut over or burned over. This is one of the memorandums he gave me at the time.
Q. This was July, 1875, that you bought it?
A. Yes, sir.
Q. Will you state whether soon after that you made any efforts to sell the land, and how and through whom?

Mr. Geer: I object to any sale except the one made to the defendant in this case as being irrelevant and immaterial.

A. I gave a description of the property with the abstract to Albert M. Steele, who went to Buffalo to dispose of the property to his brother-in-law, Mr. Lee.
Q. About what time was that?
A. It was about the first of September, I think the tenth of September, from memorandum I have found in regard to it; I think about the tenth of September.
79 Q. Did he sell the land for you?
A. He did not.
Q. Do you know whether he had any offer for it?
A. Yes, sir.

Same objection.

Q. Will you state what report he made to you about that?
A. He said he had been offered thirty thousand dollars for the property; advised me not to take it, as he deemed it to be worth more than twice that amount.
Q. State what you knew of Mr. Steele being familiar with the value of such property.
A. I knew that he had been lumbering for a number of years, and had been lumbering for the last four or five years in that vicinity. He had done a great deal of business with me as a bank officer in connection with some rafting he had been doing upon these rivers, and I knew he knew the qualities of pine and Rankin's estimate, and I knew he had sold a large tract of land to this Mr. Lee, for which he had deposited forty or fifty thousand dollars in the bank a few days before.

Mr. Geer: All this taken subject to the same objection.

Q. Did you accept the offer of thirty thousand dollars cash?
A. I did not; I refused it.
Q. About that time and when did you make any effort to borrow some money upon this property?

A. Yes, I did; the fifteenth of October, 1875, I applied to J. C. Ayer & Co.

Q. Through whom?

A. Mr. Alfred Russell.

80 Q. What did you want to borrow upon it, what amount?

A. Twenty thousand dollars for five years with the privilege of three.

Mr. Geer: The above is taken subject to objection as being incompetent.

Q. At that time did you furnish Mr. Russell with any estimates of the value of the property; and, if so, what?

A. I furnished the original estimates made by Mr. Rankin and certified to as to their value by George S. Frost & Co. and A. M. Steele. They were valued by them at sixty thousand dollars at that time. That was the fifteenth day of October, 1875.

Q. About that time did you see the defendant, Mr. Peter?

A. Yes, on the sixteenth day of October, 1875.

Q. What connection had he with this estimate?

A. He went up to Mr. Russell's office and told him that [the] property was worth one hundred and twenty thousand dollars.

Q. Do you know whether you were present at that time?

A. I do not.

Q. Well, that is not within your own knowledge. State whether you saw him come in, whether you knew of his coming.

A. Yes, sir.

Mr. Geer: I move to strike out that testimony.

Q. How came he to go to Mr. Russell's office?

A. I spoke to him about it.

Q. At that time did you have any talk with him about the land?

81 A. I did; yes, sir; he said he thought I had made a good purchase and ought to make some money.

Q. Was your application for the loan accepted by Ayer & Co.?

A. It was not; their letter stated.

Mr. Walker: Never mind about the letter. We will prove that it wasn't accepted.

A. All right.

Q. Did you then after that make any arrangement with Mr. Peter in relation to these lands?

A. Yes, sir.

Q. Will you state what it was—what passed between you and him in relation to the subject.

A. The application had been refused for the loan, and I told Peter of the fact; we consulted together in regard to it. He said if I could use his paper in enough time to throw it over to the next season, so it would not interfere with his winter lumbering and his spring operations, that he could carry it himself, that he could lend me his paper for the amount, trying to help me to do it.

Mr. Geer: I object to any oral arrangement between the parties, as it was subsequently put in writing, and the written evidence would be the better evidence of the transaction.

Q. Did anything further pass between you; what steps were then taken? You said you made this arrangement.

A. We went up in Mr. Russelll's office and made the arrangements there, completed the arrangements there.

Q. Who drew the papers?

A. They were drawn in Mr. Russell's office.

82 Q. Before you went to the office do you know whether anything was said about the form the papers should take, whether by way of bond and mortgage or deed?

A. There was nothing said about it especially. I told him I was willing to put the lands in his hands if he would do that. The question of the instrument didn't come up. except I was to put it in his hands; he was to have control of it until such time as we could sell it.

Q. Was there anything said in that connection about your then indebtedness to him?

A. Yes, sir.

Q. What?

A. About the taking care of the ten-thousand-dollar notes.

Q. What was said?

A. I told him that would be ample security for the ten thousand dollars besides. That was one object I had in making the arrangements with him, that it might secure the ten thousand dollars besides.

Q. State what he said in relation to that.

A. He acquiesced in that. I think he went down to my house to dinner that day, and we talked it over in going down and coming back, if I remember right.

Q. Was there any different arrangement made before the papers were executed, or was that the arrangement; was there any change in that arrangement.

A. I don't recall anything, sir.

Q. You gave him a deed of the land?

A. Yes, sir.

Q. Now what papers did he give you at that time?

83 A. He gave me two notes of ten thousand dollars each.

Q. Payable when?

A. The next season.

Q. Notes on interest, or how?

A. Yes; seven per cent. interest.

Q. How long after that did you remain in Detroit?

A. Until February, 1876.

Q. This was in 1876?

A. Yes, sir.

Q. And where did you go then?

A. To Chicago.

Q. How long were you absent at Chicago until you returned?

A. Until December, 1876; I came back in December, 1876 I have got the exact date—December nineteenth, 1876.

Q. How long did you remain here?

A. About three weeks.

Q. And where did you go then?

A. Back to Chicago again?

Q. And how long did you remain there then?.

A. About a month; then went to California.

Q. Now, up to the time you left Detroit, state whether you were in the habit of seeing Peter from time to time.

A. Quite often.

Q. Anything said after this transaction—after the papers were executed, in October—as to the sale of these lands between you and him?

84 A. Oh, we often referred to it in a general way that we hoped to get some money at the time. I saw him in December, 1876, too, at the Michigan Exchange.

Q. Now let me go back. You said this land was to be security for the ten thousand and the twenty thousand. Was he to have any other interest in them? What was the arrangement?

A. The arrangement was he was to have half of it after paying my indebtedness to him; in other words he agreed to give me half of that [which] remained after I paid him from the lands what I owed him.

Q. You say you saw him in December, 1876. Do you remember any conversation that occurred then in relation to the lands?

A. Yes, sir.

Q. What was it?

A. He said he hoped to be able to get *out* money out of it; that pine lands were looking pretty blue; that he had lost a large amount lumbering on the Rifle. He said he had better thrown $200,000 into the bay than put it into it. We were speaking about lumbering operations. I remember that distinctly.

Mr. Walker: I gave you notice to produce the letter written to Mr. Peter from San Francisco by Mr. Cadman in 1878 some time.

Mr. Geer: We have no such letter, and we object to anything contained in the letter because the notice was insufficient—did not describe a letter with any date to it or anything the letter was supposed to contain—simply the mere fact to produce the letter that was written in 1878.

Q. State whether you wrote a letter.

A. I wrote to Mr. Peter.

85 Q. From where?

A. From the office of the Central Pacific railroad in San Francisco.

Q. About when?

A. About October, 1878.

Q. State whether that is the only letter you wrote him while in California.

A. Yes, sir; the only one.

Q. Can you remember the contents of that letter in a general way?

Mr. GEER: I suppose the objection I have there is sufficient. I object to the showing of the contents of the letter.

A. I asked him if he had realized on the land yet, and if it wasn't about time I had received a dividend; that was the substance of it; mentioned some personal matters with reference to the death of my child—something of the kind that I thought might interest him.

Q. Did you get an answer to that letter?

A. I did.

Q. Do you know what became of it?

A. I do not.

Q. State whether you have examined for it.

A. I have had my letters sent on to me from California, and I have examined them paper by paper and I have not been able to find it. I remember distinctly the envelope and the way in which it was addressed, and of my getting the letter and of reading it to my wife and family, and I remember nearly the contents of it.

Q. Is your wife not living?

A. She died eighteen months ago.

Q. Will you state what the contents of the letter were?

86 Mr. GEER: Wait one moment; I desire to object to the giving of the contents of the letter, as no foundation has been laid for the introduction thereof.

Q. You say you cannot produce the letter — you have lost it?

A. Yes, sir; possibly it may be here in a few days; I have written for another trunk; my effects have been somewhat scattered; I saw the letter afterwards; whether it was burned up I cannot say; I wrote to one of my boys the other day where they might find it and I have not received any reply yet.

Mr. GEER: I still object to his testifying to it, because the evidence now shows it may still be produced.

Q. Will you state the contents?

A. He said he hadn't cut any of the timber on the land yet, had realized nothing yet; therefore there was no margin coming to me.

Q. When did you return from California?

A. I came here in February, 1881.

Q. Have you had any personal interview with Mr. Peter since then?

A. Yes, sir.

Q. When and where?

A. Toledo, about the first of February.

Q. Did you say anything to him then about this matter?

A. Yes, sir.

Q. Will you state what took place between you?

A. I asked him [if] he would not make an advance on my interest, at least for a year; he said he hadn't sold any of the land or cut any of the timber; that he never got his money out of it, and didn't want to do anything of the kind.

87 Q. Anything else that took place? State all that took place—whether he recognized your right or not.

A. He didn't deny that I had an interest in it.

Q. Was there anything said about it?

A. Nothing more than what I have stated. We had a general conversation about that and other matters, and I asked him if he would not discount it for a year. I said you will probably realize within a year. He said no, he would not do anything of the kind, although at one time I thought he would do it. I asked him for a very small amount and he refused to do anything of the kind.

Q. Have you ever paid that $10,000 you owed him before this transaction?

A. I have not.

Q. When were those $5,000 notes last renewed by you or by him for you?

A. In the fall of 1875; I don't remember the exact date.

Q. From that time has he ever called upon you for the payment of those notes or any portion of them?

A. He never has.

Cross-examination by Mr. GEER:

Q. How old are you?

A. Forty-six in September; will be next September.

Q. How long had you lived in Detroit prior to your removal in 1876 to Chicago?

A. Since 1853 or 1854; '53 I think it was; I went into the Insurance Bank in 1854 or 1855, in the winter of 1854.

88 Q. What position did you first occupy when you first went into the bank?

A. Corresponding clerk.

Q. Did that bank after change its name?

A. It was called the Michigan Insurance Bank, and afterwards changed to the Michigan Insurance Company Bank, and afterwards changed to the Michigan Insurance Bank, and then rechanged to the National Insurance Bank. I stayed with it during those changes, fifteen years.

Q. Was that the name of it in 1875?

A. Oh, no; I left that bank in 1868; I was there fifteen or sixteen years.

Q. Then were you in any other bank?

A. Yes; the Merchants' and Manufacturers' Bank.

Q. When did you go into that?

A. I think it was 1868—I believe it was; I can tell in a minute.

Q. You think it was in some time in 1868?

A. '67 or '68; yes, sir.

Q. What position did you occupy in that bank?

A. Cashier.

Q. From the time you first went into it?

A. Yes, sir.

Q. Were you also stockholder in the bank?
A. Yes, sir.
Q. What kind of stock did you represent?
A. Two to five thousand at different times.
Q. During the time that you were there?
A. Yes, sir.
Q. You say Peter was also stockholder?
89 A. Yes, sir.
Q. During all the time you were?
A. No, sir; I don't think he was. I was a stockholder before he was.
Q. About what time did he become stockholder of the bank?
A. I could not tell you for certain.
Q. Do you recollect the amount of stock he had?
A. $10,000, two hundred shares.
Q. Was he a stockholder in 1872?
A. I think so.
Q. About what time was it that he first gave you the authority or power of attorney to vote as his representative?
A. In May, 1871.
Q. How long did it continue?
A. To the time the bank changed its organization.
Q. When was that, about?
A. I guess about three years ago; that is, it never had been revoked; I found it among other papers. I had a proxy for five hundred shares.
Q. When did you stop voting?
A. When I resigned.
Q. When was that?
A. In January, 1876?
Q. In 1872, or the time that Mr. Peter loaned you his name for $10,000, what was your standing with the bank?
A. Cashier and director.
Q. State whether or not you were not liable to lose your position.
[A.] ——.
90 Q. Didn't you represent to Mr. Peter that you were liable to lose your position, and that you wanted him to loan you his name or give you his paper for $10,000, so that you might retain your position as cashier of that bank?
A. No, sir.
Q. Did you have any such conversation with him?
A. Nothing with regard to my retaining my position whatever.
Q. Didn't he loan the money to you personally?
A. Yes, sir.
Q. What did you want of it if not for that?
A. I had other uses for it.
Q. What were they?
A. To purchase car-loan stock and other purposes.
Q. Then were you speculating outside?
A. It was not a speculation.

Q. What was it?
A. An investment.
Q. Wasn't it liable to decline and rise the same as other stock?
A. No, sir; they were paying a dividend those days.
Q. How long did they continue to pay dividends?
A. Up to date, only smaller dividends.
Q. Did you use any of this money in the purchase of that stock?
A. Yes, sir.
Q. How much?
A. I don't remember; used it as it suited my convenience; sometimes used notes, sometimes not.

91 Q. Did you use either of these notes to make purchases of any of this stock?

A. I presume I used some of the proceeds, though I cannot say positively.

Q. What did you do with the notes?
A. Had them discounted.
Q. Where?
A. Different places.
Q. Tell us one.
A. At the Savings Bank, I think.
Q. When?
A. I cannot tell the date.

Q. Do you know whether you put a dollar into these stocks you have spoken of?

A. Yes, I did.
Q. How much, as near as you can estimate it?
A. I remember putting forty-six hundred dollars at one time.
Q. What time?
A. In 1872.
Q. At what time in 1872 as near as you can remember?

A. Oh, the fall. I was director in two or three companies at that time.

Q. What became of that forty-six hundred dollars?
A. I received stock for it.
Q. What did you do with the stock?
A. Held it for a long time.
Q. What did you do with it then?
A. Sold it.

92 Q. To whom?
A. Don't remember who it was.

Q. What did you do with the proceeds?
A. Used it in different ways.
Q. Use it in paying any of those notes?
A. Never used it in paying notes.
Q. Why didn't you?

A. Because I wanted capital to use in something else that might arise.

Q. Didn't you have any capital then?
A. Oh, yes.
Q. How much in 1872 were you worth?

A. Oh, I suppose I was worth $15,000 to $20,000.

Q. What was it invested in?

A. Different things.

Q. What?

A. Stocks.

Q. Give us the stocks. You said you had $2,000 or $3,000 in this bank?

A. I cannot remember exactly.

Q. Can you state anything as to this $2,000 or $3,000 in the bank?

A. Yes; I had $5,000 worth of Detroit car-loan stock at that time.

Q. What was that worth in 1872?

A. It was selling from eighty to par.

Q. What did you do with that?

A. Sold it.

Q. When?

93 A. I don't remember now.

Q. In 1872 I am speaking of now; I want to get at the time you got the loan; did you have that in 1872?

A. I think it was; I cannot tell. (Witness refers to memorandum.)

Q. Well, look at your pass-book and see how much it was worth then; that was in 1872?

A. Yes, sir.

Q. What time?

A. I think I got the stock in 1872, about the first of May.

Q. Was that before or after you had got the ten-thousand-dollar loan from Peter?

A. I think I only had $5,000 in the first place; afterwards got $5,000 more. I don't recollect exactly the time I got it.

Q. What did you get it for, as you remember; what did you borrow the $5,000 for if it wasn't to save your position in the bank?

A. It had nothing to [do] with my position in the bank.

Q. What did you borrow it for?

A. That I might have a little extra capital to operate with, make some money out of.

Q. Outside?

A. Yes, sir.

Q. You borrowed it for that purpose?

A. I think it was; I won't be positive. I was buying then car-loan stock. I was a director in three or four different companies.

94 Q. You borrowed this money to speculate with outside, did you, of Mr. Peter?

Mr. WALKER: He has not said that. It is not fair that you should put it into his mouth.

Q. I will change the form of the question. What did you borrow it for; I am speaking of the money you borrowed from Mr. Peter?

A. Oh, I wanted it for financial backing, that I might have capital on hand or credit on hand, that I might use, that I could make some money out of.

Q. Then it was for speculative purposes?

A. You might call it that. I didn't think it was speculation.
Q. Did you have any real estate at that time?
A. No, sir.
Q. Can you tell me anything else except the two or three thousand dollars stock you held in the bank and the two or three thousand dollars you had in these stocks?

Mr. WALKER: Car-loan stock.

A. I had $2,000 in one company and $5,000 in another company.
Q. Give the name of it; I may want to trace it.
A. It was the Marshall Car Company or the N. Y. & Oswego Midland Co., two or three companies I was stockholder and director in.
Q. Where were they located?
A. Offices were here.
Q. Isn't there any books kept here now by which you could ascertain what stocks you held in 1872 when you borrowed
95 this money?
A. I presume so.

Objected to as utterly immaterial.

Q. When did you dispose of these stocks you held in 1872?
A. I don't remember what year.
Q. About?
A. Within a year or two, probably.
Q. Had you disposed of all them as early as 1873?
A. I disposed of them, I think, in December, 1874, some of them.
Q. What ones?
A. I can't tell.
Q. Were they paid for or did you owe for them?
A. They were paid for.
Q. You used the Peter money to buy them with?
A. I could not tell you.
Q. Did you have any other resources?
A. Yes, sir.
Q. What did you have?
A. I had cash on hand, three or four thousand.
Q. When you got this money from Peter had you cash on hand?
A. Yes, sir.
Q. What did you want this for?
A. Because I wanted more. I didn't use the notes immediately; they laid in my tin box a month or two. I sometimes used them as collateral and sometimes didn't use them at all.
Q. Have them renewed every ninety days?
96 A. Yes, sir; sometimes I paid them; once or twice I had them renewed afterwards.
Q. Do you mean discounted them?
A. No; paid them; paid those notes themselves and got new ones afterwards.
Q. The first time that you received this did you give him a paper that you would save him harmless?

A. I think so.

Q. Did you give him more than one paper?

A. I think so.

Q. What is your impression?

A. I have no minute of it and know nothing it except in a general way.

Q. How many papers of that kind do you recollect of giving him?

A. I don't recollect but one or two.

Q. Was that along at the first?

A. No; it was along about the middle of the transaction, I think.

Q. Did you give him a paper in which you said you would pay it?

A. I think I wrote it down on a memorandum book.

Q. On a memorandum book?

A. Yes; on a memorandum book.

Q. And signed it?

A. Yes, sir.

Q. Do you remember of giving him a paper outside of that?

A. Possibly, I did.

Q. Do you remember when that was?

97 A. No, sir.

Q. This $10,000 you say ran along from some time in 1872 to some time in 1875?

A. It might have happened in 1871; it ran along two or three years.

Q. 1875 would be four years?

A. I could not say when it was.

Q. You had the use of these notes two or three years?

A. Yes, sir.

Q. During all this time did you keep the interest upon them?

A. Yes, sir.

Q. Do you remember, in 1875, that you gave him a paper in which you said you would pay them as they matured?

A. I don't remember as to the time; I know whenever he asked me to fix it I gave him whatever he asked.

Q. Hadn't you disposed of all these stocks as early as 1875?

A. No, sir.

Q. Tell us what stocks you had in 1875.

A. I don't remember.

Q. In the month of May, 1875, did you own a dollar's worth of stock in this bank or in any bank?

A. Yes, sir; I think so.

Q. What bank, and how much in May, 1875?

A. Well, I guess, perhaps, two or three thousand dollars.

Q. In what bank?

98 A. In the Merchants' and Manufacturers'.

Q. In this same bank?

A. Yes, sir; I am not positive as to that.

Q. Were you still in that bank in 1875?

A. Yes, sir; I didn't leave there, as I remember, until January or February, 1876.

Q. At the time you left there what was the state of your account with them?

A. I had no account with them.

Q. Were you indebted to them?

A. I was not.

Q. Hadn't you borrowed money for which you were indebted to the bank at the time you left there?

A. Not a dollar.

Q. Had paid them all up?

A. Had never owed them anything.

Q. You say you bought these lands from Ward in May, 1875?

A. In July.

Q. Now, in July, 1875, you had left the bank, hadn't you?

A. I had not.

Q. Oh, no. How much did you give Ward for those lands?

A. Twenty thousand dollars.

Q. How did you pay him?

A. In money.

Q. Where did you get the money from?

A. Used my own resources and other resources I had.

99 Q. Did you pay him the cash?

A. Yes, sir.

Q. How much money did you have when you bought it of your own?

A. I don't remember; perhaps three or four thousand dollars.

Q. What were the other resources you referred to?

A. Car-loan stocks and other securities—some notes and other things.

Q. Some of the stock you had been carrying along?

A. Yes, sir.

Q. Did you tell Peter you had bought it for eighteen thousand dollars?

A. I don't remember that.

Q. Isn't your memory good?

A. Usually.

Q. Don't you remember you said to him you bought it for eighteen thousand dollars, and if you could sell it you could make a couple of thousand dollars, and that he should have the benefit of that by being endorsed upon the two notes for $10,000?

A. No, sir.

Q. You don't remember that conversation?

A. He asked me, in the first place, I remember, how much I had got to give for those lands. He had coached me, as it were—advised me from time to time with regard to it fully. The transaction was well known to him.

Q. Before you bought it from Ward?

A. No, just about the time.

100 Q. You claim that you and Peter had talked about your purchase from Ward before you purchased?

A. Before we entered into any arrangement.

Q. No. Had you ever spoken to him about your negotiation with Ward?

A. I think I had mentioned it to him casually.

Q. But not in detail?

A. I think I showed him the estimates.

Q. Now understand my question. Had you said anything to Mr. Peter concerning your purchase from Ward before you purchased from Ward?

A. I think I had; yes, sir.

Q. When?

A. Oh, about the time of the purchase; some of those days when he was in the bank.

Q. Do you recollect it very distinctly?

A. I remember conversing with him with regard to it.

Q. Did you advise with him whether you had better buy it or not?

A. Yes; from time to time I did.

Q. Before you bought them?

A. Yes; I asked every one I knew that was in the pine land business?

Q. Do you know anything about pine yourself?

A. I simply had estimates; I knew they were reliable.

Q. Had you ever seen these lands?

A. No, sir; I hadn't.

Q. Were not all your representations by Ward?

101 A. I had the representations of Frost.

Q. What did Frost tell you was the value of them?

A. I think he said there was forty million of pine left, and probably that a certain tract the uppers had been cut off from that.

Q. How much did he say it was worth?

A. Sixty thousand dollars.

Q. How much did Ward tell you it was worth?

A. Oh, a hundred and fifty, a hundred and twenty thousand, and all sorts of figures.

Q. And sold it to you for eighteen thousand dollars?

A. No; didn't sell it to me for eighteen thousand dollars.

Q. Twenty?

A. Oh, it run along for a month or so.

Q. Did they drop back?

A. It depended a good deal upon the quality of the pine.

Q. You had a certificate of it then, hadn't you?

A. When Ward made the representations I had a certificate.

Q. You didn't buy until you got the certificate from Frost?

A. Oh, no.

Q. How much were Ward's estimates, you say a hundred and twenty to a hundred and fifty thousand?

A. I think he said something of that kind.

Q. And Frost told you it was worth sixty thousand dollars?

A. Yes, sir.

102 Q. And then you gave this man Steele these estimates?

A. Yes, sir.

Q. Was that before or after you had made your purchase?

A. Oh, it was two months after I made the purchase.

Q. And you made the purchase of that property without ever going to see it?

A. Yes, sir.

Q. Without knowing what pine there was upon it or the quality except by these certificates?

A. Certified estimates.

Q. Did you ever see the land?

A. No, sir.

Q. Never have until this day?

A. No, sir.

Q. You have no knowledge how much there is on it?

A. Yes, sir.

Q. Of your own knowledge I speak of.

A. Oh, no, sir; I had just been up to Newaygo county; that is all.

Q. Was this your first land speculation?

A. No, sir; I had a piece up in Alpena county that I sold the other day, since I have been here.

Q. How long had you had that?

A. Six or eight years—ten years.

Q. How much?

A. Forty acres; sold it for three hundred dollars the other day.

103 Q. When was the first time you talked with Mr. Peter with reference to selling him these lands?

A. I don't know as I ever talked with him about selling them.

Q. When is the first time you ever had any conversation with Mr. Peter with reference to placing them in his hands, as you term it? Give us the date, as near as you can get at it.

A. It was about the 24th or 25th of October, or possibly the 16th of October, 1875.

Q. Where were you?

A. In the bank.

Q. What was the conversation between you and Mr. Peter—the first talk you had about it?

A. He said, "Mr. Cadman, if I had the money I would like to take these with you."

Q. You already had them?

A. Understand that I told him I had got to carry this load.

Q. What load?

A. I had borrowed the money on collaterals.

Q. You had borrowed money to put into it?

A. I stated what I put into it.

Q. These collaterals were those other stocks you speak of?

A. Stocks, notes, and one thing and another. I had some notes I discounted.

Q. Do you remember from whom you borrowed money to pay Mr. Ward?

A. No; I guess I got some from the Savings Bank.

Q. How much did you get from the Savings Bank?

104 A. I don't remember how much; I could tell by looking at my memorandum.

Q. Well, get at it pretty near. When did you borrow money with reference to the time you paid it over to Ward?

A. I paid Ward all up in the month of July.

Q. That is the time you bought it?

A. Yes, sir.

Q. You paid him all the money down?

A. Yes, sir; within a thousand dollars.

Q. Now, then, when did you borrow the money of these different banks or parties with reference to the time you paid it over to Ward?

A. I could not tell you.

Q. You certainly didn't have ten or fifteeen thousand dollars lying around loose for any length of time, did you?

A. No, not very long; I had three or four thousand, I know.

Q. You borrowed the balance of this twenty thousand dollars to pay Ward?

A. From my own resources, yes, sir.

Q. You paid it from your own resources and borrowed money, as I understand you?

A. Yes, sir.

Q. How much do you say you got from the Savings Bank?

A. Oh, I don't know.

Q. Now, then, isn't it true that the money Mr. Peter paid you or the notes that he gave were used in paying Ward?

105 A. No, sir.

Q. Not a dollar of it?

A. I have no knowledge of any such thing.

Q. I now refer to these notes you got at the time you deeded him (Mr. Peter) the land; whether you used this for the purpose of paying Ward or the proceeds of those?

A. I had settled with Ward long before that.

Q. Had you used any of the ten thousand dollars that he had loaned you previous to that to pay Ward with?

A. I think not; I could not tell you.

Q. You think these notes first given you were merged in the other stocks as collateral which you put up to pay Ward with?

A. It might possibly be so; I could not say positively.

Q. I would like to have you give me the names of the bank and individuals from whom you borrowed money to pay Ward.

A. It is a matter I have not thought anything about. I was in the habit of going out and borrowing money whenever I pleased—that is, often times I would get three thousand dollars of one man and five thousand of another.

Q. This was not a small matter?

A. Well, my transaction with the Savings Bank, my account-book will show where I had an account there of four or five hundred thousand at different times.

106 Q. Now is that as near as you can tell where you got this money you paid Ward?

A. I think I got it at the Detroit Savings Bank, although I might have got some at Butler's. My bank books will show some of the transactions.

Q. But will they not show it all?

A. No; I made no memorandum, because I had no occasion to. I know I was in the habit of making large transactions. I kept the bank account with him for a great many years—from 1860, in fact—an individual account with the Savings Bank; used to make checks for thirty and forty thousand dollars.

Q. Didn't have money to meet it though?

A. Yes, I had $75,000.

Q. In 1872?

A. No, sir; I say in 1862, 1863.

Q. You lost heavily, did you, afterwards?

A. Yes, sir; in 1863 I had forty thousand dollars that I had made here.

Q. In 1872 you had lost a greater portion of it?

A. I had lost considerable of it—$15,000. I worked on a salary of two thousand dollars a year in the bank here getting it started, and it cost me $5,000 to live; had an income outside. It cost me at least $5,000 to live.

Q. So that you were losing about $3,000 a year?

A. For myself I did.

Q. Were you indebted to any other bank besides the bank in which you were working in 1872?

Mr. WALKER: I object to the question. He says he wasn't indebted to that bank.

107 Q. I asked him if there was any bank outside besides that.

Mr. WALKER: That means that he was indebted to that bank. It is assuming that he said that he was indebted to it.

Mr. GEER: I didn't intend to convey that meaning. You say you were not in debt to the Merchants' and Manufacturers' Bank in 1872. Were you in debt to any other bank?

A. Only on collaterals; that is all.

Q. You were indebted to them and they had these collaterals?

A. Oh, I had different collaterals. I had Michigan State bonds. I had lots of different collaterals. I cannot recollect the details of that. My business outside of the bank was active.

Q. I ask you whether you were in debt outside of that bank in 1872.

A. I have no knowledge of that.

Q. Were you in July, 1875, indebted to those banks?

A. I have no recollection.

Q. Haven't you ever settled with them?

A. I say I have no recollection of it in July, 1875.

Q. Were you in the month of October, 1875? I will bring you down now to the 25th of October, when this transaction between you and Mr. Peter occurred.

A. I don't remember.

Mr. Walker: You are asking him about an indebtedness outside of collaterals.

Mr. Geer: I asked him if he was indebted to any banks. He says he was not indebted to the one in which he was at work.
108 Now I ask him if he was indebted to any banks in this city, Butler's or the Savings Bank, in the month of October, 1875.

A. The last of October, 1875, I think I was.

Q. The 25th of October, 1875, was the date of this transaction?

A. Yes; I think that was the time.

Q. How much were you in debt?

A. I think I was in debt $10,000, at the different banks—the Mechanics' and the Savings.

Q. That would be $10,000?

A. Yes, sir.

Q. Didn't you sell these lands to Mr. Peter for the purpose of realizing that money?

A. I didn't owe the Savings Bank until after the transaction with Mr. Peter was made.

Mr. Walker: Do you mean that it was not due? What do you mean by owing them?

Q. I cannot confine you to the 25th of October.

A. Very well, on the 25th or 26th of October I borrowed $10,000 at each of these two banks.

Q. What for?

A. Because I had advanced two notes. I gave my own note and used those as collaterals.

Q. What for—to pay them for what you were owing them?

A. No; I didn't owe those banks anything at that time.

Q. At that time you borrowed $20,000. Now, what did you borrow the money for, Mr. Cadman?

A. I told you I gave my own note and used his notes as collateral.

109 Q. That is you had borrowed $20,000. What did you borrow the money for?

Mr. Walker: What did you do with the money; what did you borrow the money for?

A. To take up obligations I had in other directions.

Q. You raised this $20,000 to pay other prior indebtedness?

A. Yes; and to pay back my own money that I had advanced.

Q. Now, sir, the first time that you talked with Mr. Peter did you and he on that same day consummate your arrangement?

A. I don't think it was the same day.

Q. When and where did you next see him to have any talk with him concerning this land transaction?

A. I think it was in the Merchants' and Manufacturers' Bank.

Q. What date?

A. The 24th or 25th of October, I think it was.

Q. Well, sir, at that time, did you and he make the arrangement that you have spoken of in your direct testimony?

A. It was that day or the next day; we had several casual conversations in regard to it.

Q. I would like to get right down to the time when you made the arrangements.

A. I think it was October 25th, 1875.

Q. That was the date of the deed?

A. I think it was, or the day before.

Q. Where did you and he make that arrangement—at what particular location?

110 A. In the bank in Mr. Russell's office; we concluded the conversation in Mr. Russell's office, I think.

Q. Were you not at the Michigan Exchange talking with him?

A. I don't remember being there with him at that time; still I may have been.

Q. And was not the arrangement made there at the exchange, whatever was made between you and him?

A. I think it was.

Q. Did you have any conversation whatever with Mr. Peter in the presence of Mr. Alfred Russell concerning the details of you agreement with him?

A. Yes, sir.

Q. Why did you go there?

A. Because we had agreed with Mr. Russell that he should draw the papers.

Q. It was not necessary that he should know anything about the bargain, was it?

A. Oh, yes; because Mr. Russell had written for me to borrow the money of J. C. Ayer & Co.

Q. What had that to do with borrowing it of Mr. Peter?

A. It was part of the arrangement; the arrangement with Mr. Peter was brought about by the fact that Ayer & Co. had refused to make the loan.

Q. How did Mr. Peter know it—from you?

A. Yes; I told him about it.

Q. When did you tell him about that?

A. Just as soon as the answer came back; that very day, I think, or the day after the answer came back—the 25th of October.
111 I think it had come back. I think it was the very day we had completed the transaction.

Q. Did you tell him then about the transaction between you and Ayer, about your trying to borrow the money?

A. Yes; he knew about it before. I told him I was trying to borrow the money before.

Q. Then did you apply to him—ask him if he would let you have the money?

A. I asked him if he would help me swing it. He said he had no money.

Q. What else?

A. He said that if I could use his paper and throw it over so it would not interfere with his banking operations or lumbering operations he could swing it, and he could get rid of it the next summer.

Q. Was that all?

A. He said he would try to help me carry it. He thought I had a chance to make something.

Q. Wasn't he to have anything for it?

A. Certainly, he was to have an interest in it.

Q. When was that talked about?

A. At that very time.

Q. Then you applied to him, didn't you?

A. Yes, sir; I asked Mr. Peter if he could not help me carry it. We had talked over different ways about carrying it. I had conversed with him before about it—if there was not some way in which it could be carried and make some money out of it. He said he thought it was a big purchase; said it was a dozen times.

Q. For you at the time you bought it?

A. Yes, sir.

112 Q. Now you say he was to let you have how much, twenty thousand dollars?

A. Yes, sir.

Q. And he had already let you have ten?

A. Yes, sir.

Q. Which was thirty thousand dollars, and he was to take it and keep it until such time as you could sell it?

A. Yes, sir; that he could sell it, as he was an experienced man; knew more about such matters than I did.

Q. That was the substance of the bargain between you and him, was it?

A. Yes, sir.

Q. Where was that conversation held, at the bank?

A. At the bank.

Q. Then you went to Mr. Russell's office?

A. Yes, sir.

Q. Who was present?

A. Mr. Russell was present.

Q. Did Mr. Russell draw the writings between you—a memorandum?

A. He took the memorandum; the papers were drawn there.

Q. Did you and Mr. Peter remain there in the office until the papers were drawn?

A. I think so, or else—we remained therein together, I don't know how long. Perhaps Mr. Peter waited and I went back to the bank again and came back again; I think so.

Q. But the papers were drawn on that day?

A. Yes, sir.

113 Q. What papers were drawn between you and Mr. Peter at that time?

A. Mr. Russell had the deed made and it was taken down and executed.

Q. Was your wife there?

A. No; Harry Russell went down to my house and took her acknowledgement.

Q. Did you go down with him?

A. Yes, sir; I think so.

Q. Mr. Peter remained at the office?

A. I don't remember how that was.

Q. Was there any paper made besides the deed from you to Mr. Peter?

A. I don't remember any other.

Q. You don't remember any other paper being made?

Mr. WALKER: From him to Mr. Peter?

Mr. GEER: Yes, from him to Mr. Peter. Was there any other paper made from Mr. Peter to you?

A. I think not; I don't remember any.

Q. Only some notes. You say there were two ten-thousand-dollar notes?.

A. Yes, sir. He says I don't know whether you can use these or not. He says I could not.

Q. About how long was the note?

A. Six or nine months.

Q. Are you sure there were but two notes?

A. I think so.

Q. As positive of that as anything you have said?

A. I think there were two notes.

114 Q. Who drew the notes?

A. Now I don't know whether I did or the clerk did.

Q. They were drawn there that same time and exchanged with the deed?

A. Yes, sir.

Q. Didn't Peter give you back any writing to show the arrangement between you and him?

A. No.

Q. Why didn't you have a writing?

A. Because I didn't think it was necessary; he had trusted me with his two notes of ten thousand dollars; my desire was to give him security for the ten-thousand-dollar notes and give him a chance to make something.

Q. You didn't ask any security of him as to the carrying out of the contract?

A. We made no agreement all; only just simply what I said.

Q. That was in October, 1875?

A. Yes; he told me a half a dozen times he hoped I would make something nice out of it.

Q. Make something nice out of it; when did he tell you that?

A. While the transaction was going on.

Q. While you were talking the matter over?

Mr. WALKER: And afterwards, he says.

A. And afterwards; yes, sir.

Q. Do you say you didn't take any security for the paynent of it?

A. I don't know as I did; I don't remember positively; I don't recollect about that.

115 Q. You recollect anything about the consideration mentioned in the deed?

A. I know it was twenty thousand dollars.

Q. Why wasn't it for this thirty thousand if it was given to secure both?

A. Because that other paper hadn't matured yet.

Q. I know, but it was indebtedness as between you and him.

A. Yes, but it hadn't matured at that time.

Q. Very true, but it ought to have gone in, as it was a part of the indebtedness from you to him?

Objected to.

Q. Didn't the two notes for five thousand dollars each, making it ten thousand dollars, enter into and form a part of the consideration, the same as the twenty thousand dollars did for the purchase of this land?

A. No, sir.

Q. Didn't?

A. No, sir.

Q. Didn't you state upon the direct examination that you gave this deed for the purpose of securing the ten as well as the twenty?

A. I said that was my object, but it was no part of the consideration.

Q. It was no part of the consideration?

A. My desire was that Peter should have the land in preference to any one else.

Q. Why didn't it go into the consideration as the consideration of the deed?

A. Because——

Q. There was this twenty thousand?

116 A. Oh, no; he knew it was necessary for me to raise a certain amount of money.

Q. Didn't you state to Mr. Peter at the time that deed was delivered by you to him that you would out of this twenty thousand raise two thousand out of it, so as to apply upon that ten thousand dollars?

A. Oh, no, sir; I never thought of it.

Q. Why didn't you pay that ten thousand dollars? Tell me, didn't you state this to Mr. Peter at the time it was made, that you were making two thousand dollars; that it only cost you eighteen thousand dollars; that you would make two thousand dollars and apply it upon the two five-thousand-dollar notes that you then held?

A. No, sir.

Q. That in the meantime you would take care of this other paper as it matured?

A. I have no recollection of anything of the kind.

Q. Why didn't you pay this ten thousand dollars?

A. Because I considered the land in his hands as ample security.

Q. I know, but you say you gave him a paper that would save him harmless?

A. Yes, sir.

Q. Was there any arrangement made then and there that you should not pay these two five-thousand-nollar notes—I mean on the 25th of October, when the land was deeded to you?

A. The only remark that was made about it was, "Now, Mr. Peter, you have ample security in your hands for the two notes of five thousand dollars."

Q. Who was to pay them when they did mature?

117 A. Why, he was to take care of it.

Q. Then this deed was given to secure the payment of this as a whole?

A. It wasn't so stipulated at the time.

Q. Was it afterwards?

A. No; we simply had a conversation about it.

Q. No agreement?

A. No agreement.

Q. Then as a matter of fact it was never turned over to secure them?

A. The fact that there was margin; it was all that there was necessary.

Q. You considered that he would make over and above ten thousand dollars enough to secure the twenty thousand dollars?

A. Yes; and twice that. He told me himself the land was worth over $100,000.

Q. When?

A. Within a week of the time the transaction culminated.

Q. Before or after?

A. Before and afterwards too.

Q. Did he claim that he had ever seen it?

A. No; but he knew the estimates.

Q. Now let me ask you the question so there will be no misunderstanding: Was there any positive arrangement made between you and Mr. Peter by which the lands were to secure him upon the first of those two $5,000 notes?

118 A. There was an understanding between us if he made the advance of those two notes and took a deed of that it would be ample security for the indebtedness.

Q. Who was to buy it?

A. I was to buy it; he asked me in regard to it and I says I will turn some of my assistance into it; the idea was I was to help carry the load.

Q. What were you to do with the $5,000?

A. If some matters came out that I had on hand, if it was convenient, I was to take hold and help carry it.

Q. Did they come out?

A. No.

Q. You didn't take hold?

A. No, sir.

Q. He was compelled to pay them himself afterwards?

A. Yes, sir.

Q. Did you at any time claim to him subsequently that he would pay those notes?

A. Nothing positive stated about it at all.

Q. You and he have never had any conversation concerning the payment of that $10,000 since that time?

A. No, I think not.

Q. You would remember it if you had?

A. I don't think we had any conversation about it.

Q. And you never claimed after you put this security into his hands that you ought to pay it—that $10,000?

A. No, sir.

Q. It was not a matter that concerned you particularly?

119 A. Why, yes, our mutual agreement was I should help him carry this load.

Q. Help him to carry it by placing this property in his hands?

A. Yes, and if my position was such that I could I would help him carry it.

Q.. And if not he was to carry it himself?

A. Yes, sir.

Q. Your circumstances were such that you could not do anything?

A. I could not at that time.

Q. They have not been any better since?

A. No, sir.

Q. They have grown worse from that time to this?

A. No, sir.

Q. Have you anything now?

Objected to as incompetent.

Q. I desire to show whether your financial circumstances have remained substantially the same from that time to this?

A. No, they have improved at times; made a few thousand dollars at different times.

Q. Lost it afterwards?

A. That yet remains to be seen.

Q. You say you never wrote Mr. Peter but the one letter from California?

A. I don't remember.

Q. Did you keep a copy of that letter?

A. No, sir.

Q. You received but one from him?

120 A. That is all.

Q. That was when?

A. In 1878.

Q. Some time in October?

A. I think so. Witness refers to memorandum. Yes; in October, 1878.

Q. What have you there?

A. It is a letter that I have from the railroad company. I know when I left. I know it was while I worked in the Central Pacific railroad. I remember getting it when I was there. He directed to the Pacific Central depot. (Handing paper to Mr. Geer.)

Q. This was February 1st you received it, some little time before that?

A. I received it in 1878.

Q. Did you keep no copy of the letter you sent to him?

A. No, sir.

Q. You haven't got the reply?

A. No, sir; I have never been able to find it.

Q. When was the last time you saw the letter he wrote in reply?

A. About fifteen or eighteen months ago, about the time my wife died.

Q. You haven't seen it since?

A. No; I had a big lot of letters.

Q. Have you examined those letters?

A. I have not had an opportunity to do it. My sons sent me a package of letters, but it was not among those. I remember receiving a letter from him and knowing how it was addressed.

121 Q. Are there any other letters that you received from him besides that in Michigan or in any other State except in Calfornia concerning this matter?

A. Only some collateral matters.

Q. But nothing that bears upon this?

A. There is a letter which Mr. Walker has written to me by Mr. Peter.

Mr. WALKER: That is in connection with this case.

Q. Have you written him any letters on the subject except in California?

A. I think I have written him no letters.

Q. Was that the first time and the only time you have ever written him in which you claimed an interest in these lands; the letter which you wrote him from California?

A. I think it was; I am not positive. I may have written him once from Chicago. I came here once from Chicago and met him on the Michigan Exchange and asked him about it, and he said he had done nothing about it.

Q. When was that?

A. About a year afterward.

Q. That was in 1876?

A. Yes, sir.

Mr. WALKER: You stated in December, 1876?

A. Yes, sir.

Q. These lands were bought in 1875?

A. Yes, sir.

Q. At the time you sold these lands to Mr. Peter pine lands were in a depressed condition?

A. Yes, sir.

122 Q. No market for them?

A. Oh, they had been sold right along.

Q. Yes; but it was a very difficult matter.

A. Transactions had been made all the time.

Q. Wasn't it a difficult matter to sell pine lands at any reasonable price in 1875?

A. I think it was.

Q. Did you tell him you had been prospecting in the mines?

A. Yes, soon after I first went there.

Q. Some time in 1878 you were engaged in some of those projects, were you not; mining or something?

126 A. I think I was in the early winter.

Q. Also in 1879, were you not?

A. No, but possibly I may have done so.

Q. At the time you wrote him that letter didn't you think you had a bonanza in some mine?

A. Possibly I did.

Q. And in this letter did you say anything to him about that?

A. I don't remember; I wrote several with regard to it.

Q. What is your recollection about writing Mr. Peter?

A. I don't recollect; possibly I did.

Q. Did you want Mr. Peter to engage with you in that enterprise?

A. I have no recollection of writing anything about it to him at all.

Q. I didn't know but these things might refresh your recollection; that is why I ask you. In that letter you wrote him in 1878 or 1879, didn't you write to him concerning that matter, and inform him that there was a chance to make a good deal of money, and desire him to advance the money to go into that enterprise?

A. I have no recollection of writing that.

Q. What is that, a mine?

A. Yes, sir.

Q. You thought you saw something in it?

A. Yes, there was something in it.

Q. Did you go into it yourself?

A. No, sir.

127 Q. For want of means?

A. I had no time or capital, nothing to swing it.

Q. Didn't you write Mr. Peter concerning it?

A. I don't remember that I wrote Mr. Peter.

Q. When you came over there in February, 1881, did you say anything to him concerning that mine?

A. Possibly I may have told him something about it.

Q. Did you have any conversation with Mr. Peter at that time concerning your financial condition?

A. Yes, I told him I didn't have much money.

Q. Did you tell him where you had lost your money?

A. I don't know that I did. I told him that I had pretty heavy expenses, and made some investments that didn't pay me very well; something of that kind, perhaps.

Q. It was true that you didn't have any means, wasn't it?

A. Oh, I had a few hundred dollars; that is all.

Q. Now, sir, didn't you at that time want Mr. Peter to loan you some money or loan you his name?

A. Only in connection with this land.

Q. Did you say a word to Mr. Peter when you saw him in February, 1881, concerning your having any interest whatever in these lands?

A. I certainly did.

Q. Now, sir, did you have a conversation of this kind in his office: "Mr. Peter, you have made some money in the purchase of this land from me; I think you ought to loan me a little money, or loan me your name?"

128 A. No sir; I didn't.

Q. Didn't you at that time say: "Mr. Peter, I don't claim anything there, but, inasmuch as you have made a good thing out of this bargain, can't you afford to give me something?"

A. No sir; I spoke to him in regard to my interest in the land; asked him if he could not discount what would be coming to me, and he said he would not realize anything off of the land in a year or two yet.

Q. At this time didn't you state to Mr. Peter that you wanted to go in with some doctor in a patent medicine business?

A. Yes, sir.

Q. And ask him to loan you a little money?

A. No, sir.

Q. And you give him your note?

A. No sir; I asked him about——

Q. Answer my question.

A. No sir; I didn't.

Q. You didn't ask him to loan you a little money, so you could go in with the doctor in some patent medicine business?

A. I did not.

Q. In connection with the same thing didn't you say to Mr. Peter: "You are under no obligation, but, inasmuch as you have made a good trade you, ought to do it?

A. I did not.

Q. And you said you would work out by-and-by and pay it back?

A. I did not; but I could say what I did say though.

129 Q. I don't care about—you have answered question.

Q. After February, 1881, did you have any conversation with Mr. Peter concerning these lands until the filing of this bill?

A. Oh, the last time I saw him was in Toledo at that time.

The further cross-examination of the witness is reserved until the testimony is written out and an opportunity is had to examine the same.

Alfred Russell, sworn on behalf of complainant, examined by Mr. Walker:

Q. How long have you known Mr. Cadman?

A. Twenty years or more.

Q. How long have you known Mr Peter?

A. Since about 1869, I think.

Q. Had formerly the relation of attorney and client existed between you and Mr. Peter at one time?

A. No, I think it was the other way; I think Mr. Peter brought suit against the Tittabawassee Boom Company of Saginaw, and I was employed by the company; I think that was the way it was.

I know I became acquainted with him about that time; it may have been 1868.

Q. Do you remember Mr. Cadman coming to you in 1875 with reference to trying to procure a loan upon some lands that he owned in Newaygo county?

A. Yes, sir; Mr. Cadman did come to me in 1875 with reference to procuring a loan upon some land which he owned in Newaygo county.

130 Q. Do you know whether he produced before you at that time any written estimates—at that time or soon after?

Mr. GEER: Either before the testimony is taken or at the end thereof we desire to have an objection entered.

Mr. WALKER: Certainly; we have given you notice to produce the estimates.

Q. Do you remember whether there were any written estimates?

A. There were written estimates produced; yes, sir.

Q. What effort did you make to procure the loan upon the lands?

Objected to as immaterial and irrelevant.

A. I applied to some parties in Detroit and some parties East, and at that time I had a good deal of business with a very wealthy man named Ayer, in Lowell, Mass. I applied to Dr. Ayer in particular*ly*, I remember.

Q. For a loan upon these lands?

A. To obtain a loan for Mr. Cadman upon these lands; yes, sir.

Q. Do you know what the value of the estimates of the land —, as furnished you at that time? Have you any means of remembering what they were?

A. The best means of remembering that I have is by a reference to a letter to Dr. Ayer, which I wrote at that time, which is on page 23 of my letter-book of 1875, bearing date the 15th day of October, 1875.

Q. State whether that letter refreshes your recollection upon the subject.

131 A. It does, and by recurring to it I see the estimate which I placed upon the land at that time derived from the sources mentioned in the letter. (Referring to the letter-book.)

Q. Were those the estimates or the amount of them?

A. I gave you a copy of the letter, Judge; it is a little clearer.

Mr. WALKER: Yes; there is the copy. (Handing copy to witness.)

Mr. WALKER: We will offer this letter in evidence.

Letter is marked "Exhibit 8" and is as follows:

DETROIT, *Oct.* 15, 1875.

Messrs. J. C. Ayer & Co., Lowell, Mass.

GENTS: I wish to lay before you a loan which is first-class in every particular—$20,000, five years, with privilege of three, ten per cent., semi-annual, principal and interest payable in New York; borrower, Charles C. Cadman, cashier of the Merchants' and Manufacturers' Bank (formerly of the Michigan Insurance Bank for fifteen years), a prompt and reliable business man; security, 5,400 acres of the best pine lands in Newaygo county, Mich., near the line of the Grand Rapids & Indiana and Big Rapids & Muskegon R. R's, and accessible on two rivers. These lands were a part of St. Mary's Ship Canal property, and were sold to E. B. Ward, who conveyed to his son Milton, who sold to Cadman, borrower. Title is perfect and the land is free from encumbrances.

2. Security.—These lands are worth $60,000, and are rapidly rising. They were looked by Rankin, a first-class woodsman, whose original notes I have, and their value is known to and certified by Geo. S. Frost & Co. and A. M. Steele, whose written valuation at above 132 figure I have. Ward refused $10,000 for 640 acres some years ago. Ward bought them for his own use. The lands are not far from Grand Rapids, a city of 30,000 people; are in every respect most favorably situated. I could not bring to your attention a better investment. I will forward to you the abstract, maps, valuations, and bond and mortgage for approval if you decide to make the loan.

Yours truly, ALFRED RUSSELL.

P. S.—If you should decline the loan, which I hope will not be the case, please oblige me by placing it with some of your friends.
A. R.

The WITNESS: This is a compared copy of the letter-press copy taken from my book of 1875.

Objected to as incompetent and immaterial.

Q. From that copy are you able to state what those estimates were?

Mr. GEER: That will show, won't it?

Mr. WALKER: I want to refresh his memory to see if by looking at that he is able to state.

The WITNESS: Do you mean the valuation which I have placed upon them?

Q. Yes; the valuation put upon them.

A. The valuation put upon them at that time by me to Mr. Ayer for $60,000 as the basis of the loan for $20,000, and that valuation was based upon the papers which I mentioned in the letter, viz., the certificates of Geo. S. Frost & Co. and the written valuation of A. M. Steele at $60,000 and the notes from Rankin. At that time I had the original notes of Mr. Rankin in my possession.

133 Q. Do you remember whether, after writing that letter, you saw Mr. Peter in relation to the same transaction, and have you got any estimate from him as to the value of the property?

A. I did see Mr. Peter with reference to the same transaction.

Q. When?

A. Either on the day that I wrote the letter to Dr. Ayer, October 15, 1875, or the next day.

Q. Have you any means of refreshing your memory upon that subject?

A. I have.

Q. What are they?

A. The means I have of refreshing my recollection is the letterpress copy of a letter which I find on page 26 of my letter-book, dated the 16th of October, 1875—the next day.

Q. State whether this is the copy of that letter. (Handing paper to witness.)

A. This is a compared copy of the letter, compared by me with the press copy in my book.

The letter is marked "Exhibit 9" and offered in evidence, and a copy of which is as follows:

DETROIT, *16th October*, '75.

Messrs. Ayer & Co.

GENTS: Referring to my letter about the loan on pine lands, I would say that since writing you I have seen Mr. William Peter, a very wealthy and well-known lumberman, who assures me the security offered is worth $120,000. He is entirely trustworthy.

Yours truly,
ALFRED RUSSELL.

134 Q. Have you any personal recollection of Mr. Peter being there?

A. I have. I remember Mr. Peter came to see me in regard to the matter, and of Mr. Cadman obtaining a loan upon these lands, and I there read to him my letter to Dr. Ayer, or stated to him the contents of the letter, and told him what I had been doing with reference to obtaining a loan, and Mr. Peter stated to me as to the value of the land; told me generally about the land, and gave me his opinion about the value of that security. That opinion I find by recurring to this letter that the security offered was worth a hundred and twenty thousand dollars.

Q. Did you succeed in procuring a loan from Dr. Ayer, J. C. Ayer & Co.?

A. Dr. Ayer replied to me by letter, which I received on the 25th day of October, that he was not disposed to make the loan because his investments in Michigan were already so large.

The answer of the witness is objected to as incompetent.

Q. Did you afterwards know anything about Mr. Peter making loan to Mr. Cadman upon these lands?

A. I would say before answering that question that I find on referring to my letter-book that I acknowledged the letter of Dr. Ayer declining the loan on the 25th. I acknowledged the letter of Dr. Ayer declining the loan on the 25th.

Last question read to witness.

A. Yes, sir.

Q. Will you state what you know about that transaction?

135 A. Mr. Peter came to me in my office and inquired in regard to the loan, whether Dr. Ayer was going to make it, and he subsequently said to me—of course I told him that Dr. Ayer declined the loan—he subsequently came and said that he had concluded to carry Mr. Cadman himself on that land; that Mr. Cadman already owed him $10,000, and he had concluded to take a deed of the land and let him have $20,000 more, and hold the property as security for the whole sum of $30,000 He said that he wanted a deed out and out, so that he could handle it, and he and Mr. Cadman came to my office and desired me to prepare the papers. I don't remember whether Mr. Cadman was with him or not the first time, but I think he was.

Q. The papers were prepared in your office, were they?

A. I think they were. A young man by the name of Henry Russell wrote the deed. I may have written it myself. I don't remember how that was, but I think he wrote it.

Q. State whether that is a copy of a couple of letters that you wrote to Mr. Peter and a copy of the answer that you received from him? (Handing paper to witness.) State whether that is a copy of the answer you received from Mr. Peter?

A. Yes, sir; it is.

Copy referred to offered in evidence, marked "Exhibit 10," a copy of which is as follows:

DETROIT, *4th February*, '81.

Wm. Peter, Esq., lumber, Toledo, Ohio.

DEAR SIR: Mr. C. C. Cadman has placed in my hands two claims against you, both of which I presume you will arrange without the expense and trouble of litigation.

136 First. You made him a loan of $2,300 upon a note of M. D. Ward of $2,500, and a deed to you of 1,700 acres of land in Lincoln county, Wisconsin, as security; you to have one-half of the profits (after deducting amount of loan, interest, and taxes) for the use of the money, and the other half to be paid over to C. You also to account for and apply on loan whatever you might collect on the note to lessen the amount of deduction.

Second. Cadman had 4,500 acres of land in Newaygo and Muskegon counties, Mich., which cost him $28,000 cash. You had lent him your credit by two notes of $5,000 each, and Cadman delivered you a deed of the land for $30,000, including the above notes, and you gave him two $10,000 notes. The agreement was that you should, from the profits realized, pay Cadman one-half after deducting $30,000 interest and taxes, and this agreement you acknowledged by letter in 1878.

Now Mr. Cadman is not in a situation to have a long litigation, and I have advised friendly settlement, as I always do.

Can we settle or must we fight?

Requesting the favor of a reply soon, I remain, yours truly, &c.

ALFRED RUSSELL.

P. S.—These transactions were had in my office and are within my recollection.

Mr. Russell received a postal card from Mr. Peter's son saying that his father was absent.

(Letter 2.)

Re CADMAN *v.* PETER.

FEBRUARY 15, 1881.

Wm. Peter, Esq., Toledo, O.

DEAR SIR: Permit me to call your attention to my letter
137 of the 4th inst., to which I am without reply, except an
acknowledgment of receipt by your son stating your absence. I presume the floods have brought you home again. Of course I do not wish now to incur any expense or trouble, or have you incur any, before you have an opportunity to fairly consider the matter, and I suggest that a personal interview here is the preferable course. No papers will be served on you if you think best to come.

Yours very truly, ALFRED RUSSELL.

(Copy.)

TOLEDO, O., *February* 23, 1881.

Mr. Alfred Russell, Detroit

DEAR SIR: Yours of the 4th and 15th are before me; contents noted; in reply must say that I do not know of any transaction unsettled, with the exception of $10,000 and interest, which Mr. Cadman honestly and truly owes me. Lawfully it may be outlawed; morally he owes it to me until paid.

Yours respectfully, WILLIAM PETER.

Q. State whether this is a copy of the letters sent to Mr. Peter.

Hands paper to witness.

A. Yes, sir.

It is admitted that a copy was served upon him. Paper marked "Exhibit H" is offered in evidence, a copy of which is as follows:

(Copy.)

DETROIT, *February* 26, '81.

William Peter, Esq., Toledo, O.

DEAR SIR: Your favor of the 23d received. You say you know of no unsettled transactions with the exception of $10,000 which
Mr. C. owes. It is true that he owes that and much more to
138 you, namely, $13,866.67, (which includes the $10,000,) in respect
to the Michigan land, (reserving interest,) and also $3,626.67 in respect of the Wisconsin land, (also with interest,) and I hereby, as his agent, offer to pay you all said money, together with such sums as you may have paid for taxes on any of the above lands, and I hereby offer to pay you in legal tender notes if you will accept, and in behalf of Mr. Cadman I hereby demand that

you execute and deliver to him deeds of said Michigan and Wisconsin lands on receipt — the above sum and taxes, and ask you to give me an account or statement of taxes.

Yours truly, ALFRED RUSSELL.

P. S.—Of course this offer to pay is on the supposition and condition that you have taken no timber from any of the lands.

A. R.

STATE OF OHIO,
County of Lucas, } *ss:*

Sewall S. Parker, being duly sworn before me, deposes and says that on the 7th day of March, A. D. 1881, he delivered a true copy of the within letter to William Peter at the city of Toledo.

SEWALL S. PARKER.

Subscribed and sworn to before me this 8th day of March, A. D. 1881.

[SEAL.] C. L. KENNEDY,
Notary Public, Lucas County, Ohio.

The examination was then adjourned.

EXHIBIT 2.

139 Know all men by these presents that I, William Peter, of Bay City, Mich., do hereby appoint C. C. Cadman to be my substitute and proxy, for me and in my behalf, to vote at any election of the Merchants' & Manufacturers' Bank of Detroit, and at any meeting of the stockholders of said bank, as fully as I might or could were I personally present.

In witness whereof I have hereunto set my hand and seal this 25th day of May, 1871.

WILLIAM PETER.

Witness:
—— ——, 187–.

140 In the Circuit Court of the United States for the Western District of Michigan. In Chancery.

CHARLES C. CADMAN *vs.* WILLIAM PETER.

Testimony taken July 14th, 1881, at 11 o'clock a. m., before Herschel Whitaker, a U. S. commissioner, at his office in the city of Detroit.

Present: Mr. Charles I. Walker and Mr. Charles F. Burton, for the complainant; Mr. Harrison Geer, for the defendant.

141 CHARLES C. CADMAN recalled and further cross-examination continued by Mr. GEER:

Q. How long have you known Mr. Alfred Russell previous to this transaction in October, 1875?

A. About twenty years.

Q. During that time had he acted as your attorney?

A. Not particularly.

Q. Had he acted for you in some matters?

A. I never had a case before him. I employed him as the attorney of the bank sometimes, I believe.

Q. Was he your private adviser in matters of your own?

A. Yes, sir.

Q. If you had any suits he would attend to them for you?

A. Yes, sir; I never had any.

Q. I suppose it was because of this confidential relation of attorney and client existing between you that you applied to him to get you this loan?

A. It was my knowledge of the fact that he had very wealthy correspondents in the East who were making loans in the West on lands.

Q. That is why you applied to him?

A. Yes, sir.

Q. Was it upon the theory that you were to pay him certain sums if he got the money for you? That was the arrangement between you and him?

A. Not that I know of.

Q. What arrangement was there between you and him?

142 A. Nothing said.

Q. When did you employ him to act as your solicitor or attorney in this case?

A. Do you mean the case of Cadman *vs.* Peter?

Q. Yes, sir.

A. I think I laid the facts before him at the time Mr. Russell wrote Mr. Peter, in February.

Q. Then it was prior to the 4th of February that you spoke to him in this matter?

A. Yes, sir.

Q. And then was the time that you retained him?

Mr. WALKER: You are saying now what he has not said. You say to him that he stated so. That is the objection to the question.

Q. Fix the date as near as you can when you first spoke to him with reference to this matter.

A. In the fore part of February I laid the matter before him.

Q. Did you request him to act for you in the matter?

A. Yes, sir.

Q. What arrangement did you make with him for pay?

A. I never made any arrangement with him.

Q. Was he to have a certain portion in case you were successful?

A. He was not.

Q. Any such arrangement made between you and him?

A. No, sir.

Q. No arrangement made whatever for his fees, was there?

143 A. No, sir.

Q. Will you look at that? (Handing paper to witness.) See if that is your signature.

A. Yes, sir.

Q. Did you obtain the money upon that note?

A. Yes, sir.

Q. And at the time you obtained the money upon that note did you place as collateral thereto two other notes that you obtained from Mr. Peter secured by a mortgage?

A. Yes, sir.

Marked "Exhibit A 1."

Mr. Geer: I served a notice upon Mr. Burton to produce a couple of letters written by Mr. Peter to Mr. Cadman.

Mr. Walker: We know nothing about it.

It is admitted that notice was served to produce two letters from William Peter to Charles C. Cadman, one bearing date the 22d day of January, 1876, and one bearing date January 28, 1876.

Q. I will ask you if you have those letters?

A. I have no knowledge of them.

Q. Have you examined to find them?

A. Yes, sir.

Q. Been able to find them?

A. They are not among my letters.

Redirect examination by Mr. Walker:

Q. You have said that you spoke to Mr. Russell about putting this matter in his hands, but made no arrangement with him; is he now acting as your solicitor in this matter?

144 A. He is not.

Q. On your cross-examination the other day you testified in relation to your having paid Mr. Ward $20,000 for these lands; have you had occasion since then to examine as to the question of how much you did pay him?

A. Yes, sir.

Q. And how much in fact did you pay him?

A. $24,000.

Q. State whether at the time the deed was made from Mr. Ward to yourself you had advanced anything at all.

A. I had not.

Q. Will you state for what purpose Mr. Ward was getting that money?

A. He was contesting his father's will in the courts here.

Q. When did you make the first advances, with reference to the date of the deed; before or after the date of the deed?

A. Before the date of the deed and immediately after.

Q. So the first advances were made before the date of the deed?

A. Yes, sir.

Q. Did you have any security for those first advances?

A. No, sir; nothing.

Q. And at the time of the date of the deed how much did you agree to advance him upon the land?

A. $20,000.

145 Q. And for what purpose was the deed in the first instance given?

A. It was given as security for money advanced and to be advanced, with an agreement that the lands should be mine as soon as I got the advances made.

Q. And under that agreement you say you did actually advance $24,000 and over?

A. Yes, sir; and over.

Q. State whether at the time of that agreement you had examined into this matter as to the extent of your advances at the time before; I mean when you were examined; whether you had examined it then.

A. Yes, I knew that I had disbursed a good deal more money than stated at that time. I didn't have the facts and figures with me at that time. I hadn't the memorandums with regard to it with me then. They have come on since.

Q. Those you have examined since?

A. Yes, have gone all over the ground since.

Witness desires to correct his statement upon page eight of the copy of the testimony already printed, that Peter's notes were bearing eight per cent. instead of seven.

Cross-examination:

Q. When did you first advance to Mr. Ward any money as near as you can give the date?

A. About the 8th or 10th of July.

Q. 1875?

A. Yes, sir.

Q. How much did you advance him on that day?

A. I think the first was $500.

146 Q. What security did you take for it?

A. I had nothing.

Q. Not even his note?

A. Just a memorandum; that is all.

Q. Where were you when you advanced the money to him?

A. In the bank.

Q. Did you make the advance out of your own money or out of money of the bank?

A. Out of my own money.

Q. Was the money charged to you upon the books of the bank?

A. No, I had my money in a tin box; I never kept any account with the bank at all.

Q. When did you commence to advance him any money?

A. About the 17th of July.

Q. 1875?

A. Yes, sir.

Mr. WALKER: After the date of the deed?

A. Yes, sir.

Mr. GEER: How much did you advance him on that date, the 17th of July?

A. $3,800, I think it was.

Q. How did you pay that?

A. Deposited it to his credit in the bank.

Q. What security, if any, did you take for that $3,800?

A. I had the lands then.

147 Q. Then you had only advanced him $500 previous to his deeding the land to you?

A. I don't remember positively the amount I advanced him before; but from memorandums I find that was about it.

Q. You didn't then advance this $3,800 until after he had given you the deed? Gave you the deed when?

Mr. WALKER: It is dated the 10th.

Mr. GEER: When did you next advance him any money?

A. The next day or the same day; I don't know which.

Q. How much? You had better refer to your memorandum if you have one.

A. Witness refers to memorandum. I sent him $500 to New York.

Q. Was he in New York?

A. Yes, sir.

Q. Then it could not have been the same day, could it?

A. My memorandum says the 17th.

Q. Your memorandum also says you paid him the $3,800 on the same date?

A. I deposited it to his credit in the bank.

Q. Was not this draft drawn out of the $3,800?

A. No, sir.

Q. Where did you get all this money from?

A. I had it.

Q. You had it on hand?

A. Yes, sir.

148 Q. In this tin box or placed to your credit at the bank?

A. I kept it in the tin box usually; sometimes at the Savings Bank, sometimes in the tin box.

Q. About how much did you have in the tin box on the 17th of July?

A. I don't know.

Q. As near as you can remember?

A. It is impossible to say.

Q. Of course you cannot get at it exactly; you can estimate it as near as you can. You must have had more than $3,800, because the next day you let him have more.

A. I might have had $6,000.

Q. You don't remember?

A. No, sir.

Q. Do you know whether you had any money on deposit in the Savings Bank on the 17th of July or not?

A. I don't.

Q. Were you not largely indebted to the Savings Bank in July, 1875?

A. I don't know that I was.

Q. Do you know whether you were or not?

A. I don't remember.

Q. Were you not and hadn't you been for some time indebted to the Savings Bank?

A. Possibly I was as endorser on notes or something of that kind. I don't know that I had anything else there. Sometimes they had memorandum checks of mine for a $1,000 or $2,000.

149 Q. Isn't it a fact that from the month of July until the month of October you were largely indebted to the Savings Bank?

A. I don't know.

Q. And were you not required by that bank for the purpose of securing them to put up collaterals?

A. I don't know that I was indebted to them at all at that time, except I was endorser upon some accommodation paper or something of that kind. I was endorser on a note of $800 for a man who is in the Second National Bank; I remember personally.

Q. I am speaking of your own indebtedness. Were you not indebted to the bank on the 17th of July, and didn't that continue up to the 25th of October, 1875?

A. I don't know anything about it; I don't think I was. I had so many transactions with the bank it is impossible to remember the date.

Q. I want to test your recollection as near as I can. Were you not required by the bank to place all the collaterals you could get for the purpose of securing your indebtedness to it, from the 17th to the 25th of October? I asked you didn't the indebtedness continue during all that time?

A. Oh, I don't know.

Q. Do you remember placing any collaterals at that bank to secure your indebtedness to it?

A. Between those dates?

Q. Yes.

A. No, sir; I don't.

Q. Had you before that given them any collaterals?

A. I had been a customer of that bank——

150 Q. That don't answer my question. Do you recollect of the bank calling upon you to furnish these collaterals, and you furnishing them at or about this time?

A. No, sir.

Q. When did you next advance Mr. Ward any money upon this after this $500 you sent to him at New York?

A. (Witness refers to memorandum.) In September—September 11th.

Q. 1875?

A. 1875.

Q. How much?

A. $1,500.

Q. How did you pay that?

A. Paid it to the Merchants' and Manufacturers' Bank; paid up two drafts that he had made on A. G. Spencer that went to protest. I paid them myself.

Q. Where did you get that money from to pay that with?

A. From my own resources.

Q. And you paid it on this date in September that you have spoken of?

A. That is the date I have here; I am not positive about it. I have got the draft here. I cannot tell exactly the day I paid it.

Q. Did you pay it out of the money you had in this tin box?

A. I think so.

Q. When did you make the payment?

A. On the 13th.

151 Q. Of what month?

A. September, 1875; I believe that is the time; that is the date of the draft. I am not sure when I paid it.

Q. You paid it on that date or shortly after?

A. I have the vouchers here.

Q. How much did you pay that day?

A. $1,800.

Q. Draft drawn by you on Ward?

A. No, sir; draft drawn on A. G. Spencer.

Q. Who is he?

A. A man acting as agent for Ward up in Newaygo, I think.

Q. Had he anything to do with these loans?

A. I don't know. He had acted as agent for Ward in some land transactions, I believe. Ward had some lands there; I don't know what it was.

Q. From what source did you pay that money—out of this tin box?

A. My own resources; yes, sir.

Q. When was the next payment?

A. It was on the 14th of September.

Q. The next day?

A. Yes, sir.

Q. How much did you pay that day?

A. $3,000.

Q. What was that?

A. I paid a draft he drew on R. K. Bickford & Co., Chicago.

152 Q. Do you know anything about the indebtedness that existed between Ward and Bickford, the nature of it?

A. Yes, sir; Ward claimed that Bickford was to make advances on some lumber that he had in his yard, and Bickford would not do it, and the draft was returned and I paid it.

Q. Did you take that also out of this tin box?

A. I presume so; I don't know any other source. I had money coming in then pretty well.

Q. You have no memorandum showing that you put it there in the bank, have you?

A. No, sir.

Q. When next did you pay him anything?

A. In October, I think it was. (Referring to memorandum.) 20th of October, 1875.

made some disbursements on account of Wisconsin land, but that has nothing to do with this. I have another lot of vouchers for that.

Q. Then the only security you had for this $25,000 was this deed?

A. Yes, sir.

Q. What was the price agreed upon between you and Ward—$20,000?

A. $20,000.

Q. And you had advanced over and beyond that an amount you had no security from Ward for?

A. No, sir; he claimed that he was going to get a million dollars from his father's estate, and he would be in ample funds, and he was going into some arrangement or another which I would make some money out of, and he would have a big bank account.

Q. So for the $4,000 you had no security?

A. I don't remember that I had.

Q. Now, in order to get at this, I would like to ask you a question: If you don't think during all this time you were indebted to the Savings Bank, and was not the Savings Bank pressing you for security?

157 A. I don't know positively. I know that I had money borrowed at different sources, on my own name and otherwise. My transactions with the Savings Bank have been so large I could not say. I know I made the negotiation myself—borrowed it on my own responsibility.

Q. Have you any idea of the sources from which you raised this $20,000 to pay Ward?

A. I have no memorandum to guide me in the matter.

Q. I think you stated the other day on cross-examination you didn't think that any of the money you got from Peter went into it, or the money that you realized at the bank upon those notes?

A. Possibly it may have been. I know I took up liabilities of my own from the money I received on Mr. Peter's notes.

Q. Do you recollect where you applied this $10,000 you got from the bank on the 29th of October, 1875?

A. I cannot say; I don't know what I did with it.

Q. You were largely in debt during all this time?

A. Yes, sir; my obligations were out.

Q. Now, take it from October, 1875, up until January and February, 1876, how did you continue to stand—about the same financially as you did from, say, July, 1875?

A. My affairs were about in the same shape; yes, sir. When I realized of those two notes of Mr. Peter I was enabled to take up existing liabilities, and where they were I have no record of now.

Q. Then after you had this money from Mr. Peter—this $20,000—you certainly didn't grow any worse financially than you had been before that date, did you?

158 A. That enabled me to raise so much of the loan; that is all.

Q. You didn't go into any speculations afterwards that should embarrass you?

A. There was some culminated at that time. I think some shares that I owned went down—the values went down.

Q. Can you fix any date as to that?

A. I cannot tell.

Q. Do you recollect what stock it was?

A. No, sir.

Q. You have only a vague recollection of it?

A. I know I had some stocks in some company that went down very rapidly.

Q. What stock was that?

A. Car stock.

Q. Railroad?

A. Not railroad; Car Loan Company.

Q. During this time did you have any railroad stock?

A. No; but I did too. I had some stocks in a railroad in Louisiana which I was treasurer of.

Q. Was it worth anything?

A. We considered it was at that time. It turned out afterwards not to be. The Louisiana Central—I was treasurer of that road from September, 1874.

Q. Up to what time?

A. Oh, it didn't culminate until along after Eber Ward's death.

Q. When did he die?

159 A. January, 1875.

Q. Did you have some stock in the road yourself?

A. Yes, sir.

Q. How much?

A. I had $20,000.

Q. But in January, 1876, did you have any other property besides that railroad stock?

A. January, 1876?

[Q.] ——.

A. Yes; I believe I had some car-loan stock at that time; I don't remember.

Q. You had some money?

A. Pretty nearly all I put in this thing—the Louisiana Central.

Q. Then about all the money that you had was $20,000?

A. I had disbursed that.

Q. Then, were you worth anything in January, 1876?

A. Yes; I had this interest in the pine land I considered valuable. I had advanced more than I had received for it.

Q. Had you anything else besides this pine land?

A. I had this railroad stock, and I had some car-loan stock, if I remember, and some other collaterals; I believe $2,500 in notes.

Q. Good notes?

A. They have not been paid yet; no. Albert M. Riley, of the Second National Bank—I have his note and the note of a gentleman in Cleveland.

Q. What I want is whether you had anything valuable—to get at your circumstances.

A. I don't know exactly how I did stand.

160 Q. With whom did you make the arrangement to get $10,000 from the Savings Bank?

A. Mr. Adams.

Q. Was Mr. H. N. Walker there at that time? He was vice-president of the bank, was he not?

A. Yes, sir; I don't know.

Q. Do you recollect of having any conversation with him and Adams together?

A. I don't.

Q. Do you recollect having any conversation with Mr. Walker concerning it?

A. No, sir.

Q. At the time you went there and raised this money and made the assignment of this mortgage to them, what information did you give him concerning your claiming an interest in this property, these lands?

A. I said nothing about it.

Q. Did they indicate to you as to how you got the mortgage?

A. The transaction didn't open in that way.

Q. How did it open?

A. I took the notes there in the first place to Adams. He took the thing into consideration. He says, I can't use those notes as they are. I don't know Mr. Peter well enough to discount them on your endorsement. I also went to Wm. A. Butler, and he says, I don't know Mr. Peter well enough to discount his paper upon your endorsement.

Q. What date was that in reference to their being made?

A. That was on the morning of the 25th of October, I believe; in the morning or at noon.

161 Q. You didn't get them until the 25th?

A. I see, the 25th; the morning of the 25th of October.

Q. They were not made until that day?

A. Oh, well; I run right over there. I took the notes over in my hand; took them over there, showed them to them, and they thought about it a few minutes, and he says, "I don't think we can take it on Mr. Peter's endorsement. We don't know him well enough to take it on such long time."

Q. Then what?

A. I says, perhaps I can get a mortgage.

Q. Then what?

A. I went back; made an arrangement with Mr. Peter to have him give the mortgage in order that I might float the paper. I could not float the paper on as long time as that or any other time without having some additional security outside of his name and mine. The credit was not good enough. I went back, found Mr. Peter at the Exchange, told him about it; he came back with me and went to Mr. Russell's office, and Mr. Russell, if I remember right, drew the mortgage. I then took the mortgage and assigned half of it to Mr. Adams and half to Mr. Butler. It was made in the afternoon of the same day.

Q. It was either the afternoon or——

Mr. Walker: What was the date of the note? (Handing the note to witness.)

A. It says the 29th. I don't remember. It was during those days.

Q. Then you don't remember whether it was the next day or not?

162 A. This writing on the back here is mine. (Referring to "Exhibit A 1.") It appears from the date of this note I did not get the money until the 29th of October, but I think he may have advanced me something before that time—I don't know.

Q. In what way?

A. Why, if I wanted to borrow $5,000 of them at any time they would give it to me on my check.

Q. What is your recollection in this instance?

A. I know I simply borrowed $10,000.

Q. You say neither Mr. Butler nor the bank would let you have the money upon Mr. Peter's note for your own endorsement?

A. On as long time as that.

Q. You recollect that distinctly?

A. That is what they said.

Q. Are you positive as to that fact; that they refused to let you have the money upon Mr. Peter's note that you presented to him there that day?

A. Yes, sir.

Q. At both places?

A. On as long a time as that. If I had had shorter paper I might have got it. That is what my memory tells me they said to me at that time.

Q. Don't you know that is true, because you went to Mr. Peter afterwards to get that mortgage. Now, don't you state that as a fact?

A. I think that is what they said.

Q. Is that as strong as you will put it—simply your impression?

A. I might say that is what he said.

Q. You will say that is what he said?

163 A. I think so.

Q. How?

A. I am sure that is what they told me.

Q. Both Mr. Butler and the Savings Bank?

A. I think so, as near as my recollection serves me.

Q. When did you make the assignment to Mr. Butler?

A. I don't recollect about those dates.

Q. Was it before or after you did to the Savings Bank?

A. I think it was after; I am not quite sure.

Q. Are you positive as to which bank you got it from first?

A. I am not. My impression is the Detroit Savings Bank.

Q. You assigned to them enough to cover half of it, and to Mr. Butler enough for the other half?

A. No; I think it was assigned wholly to Mr. Adams, and he gave a memorandum stating how he held the mortgage; half of which was for the amount Mr. Butler had advanced.

Q. You don't remember very distinctly the transaction, do you?

A. Yes; I do.

Q. On your direct examination I think you had forgotten that any mortgage was given, hadn't you?

A. I don't know. I have been there since, to that bank, and I could not find any record of it——

Mr. WALKER: Just answer the question.

Q. It had gone from your memory that any mortgage was made?

164 A. Yes, sir.

Q. You had forgotten all about it until I called your attention to it?

A. I didn't know anything about it. I had forgotten about that portion of the transaction.

Q. Is your memory pretty good or is it at fault?

A. I think my memory is very good, but I am in the habit of working from memorandums, and the moment a thing is finished it passes out of my mind.

Q. You paid no further attention to it?

A. I paid no further attention to it. If I look at a memorandum again it will refresh my memory. It is customary in all banks to do that way—when you are done with a transaction to banish it in that way. I went to the Detroit Savings Bank recently and I simply found the word "collateral" written. What that meant they don't know to-day.

Q. You had forgotten all about it until I called your attention to it on cross-examination the other day?

A. I had no recollection of it.

Q. Did you make any memorandum of the bargain between you and Mr. Peter, as to the details of it, at the time the deed was given?

A. Yes, sir.

Q. Where?

A. In a memorandum, in a pass-book.

Q. Where is it?

A. I don't know.

Q. When did you see it last?

A. I have not looked for it.

Q. When did you see it last?

165 A. Possibly I have it on hand now. I remember making the memorandums at the time.

Q. On the 25th day of October?

A. Yes, sir, or a day or two afterwards.

Q. Where at?

A. In pencil or in writing.

Q. In pencil or in writing?

A. Usually in pencil my memorandums are made. I don't remember.

Q. When did you see it last?

A. I saw it in Kalamazoo; I saw it in California; I saw it in the bank here before I left.

Q. How recently have you seen it?

A. Not since 1878.

Q. What did it state? Just recite that memorandum as near as you can; the language.

Mr. Walker: State if you can remember; if you can't remember, state that.

A. I don't remember the detail of it. I simply know that I made a memorandum of the whole transaction, with the two previous $5,000 notes, so in case of my death it could be referred to, the $10,000 note and the pine land. They were all scheduled. I remember reading it to my wife and children.

Q. When did you do that?

A. In 1878.

Q. You don't know the words?

A. I don't. It may be in some of my goods in California.

Q. It was not of enough importance to bring with you?

166 A. It was not in my memory at the time I wrote the boys to send all the papers connected with it. My having the death of my wife, going from boarding to keeping house and back again, disarranged matters.

Q. You have never looked for it, so you don't know whether it is lost?

A. I never looked for it here.

Q. Did you look for it before you started for Michigan?

A. No, sir; I looked through all the papers they sent me here. I have never seen it here.

Q. What kind of a pass-book was it?

A. Simply a pass-book of medium size; one described for banking uses, and I used it.

Q. In that memorandum did you state that the deed was given to him to secure these two $5,000 notes he had loaned you?

A. I don't think it did enter into the memorandum.

Q. You don't think it did?

A. I don't remember.

Q. How did it get into your pass-book?

A. I don't remember what I stated in regard to that.

Q. On your pass-book?

A. No, sir.

Q. Didn't you enter it so in case of death your family would know about it?

A. I said I made a detail of the transaction in letter form, as it were—a record of the transaction.

Q. What did you say about the two $5,000 notes?

A. I said that I owed him $30,000, and he held so much pine land from me.

167 Q. That was not the real bargain?

A. That was the understood bargain.

Mr. Walker: I object to this cross-examination as inadmisssible and without any purpose. It is incompetent cross-examination.

Q. Now, then, did that entry upon your pass-book conform to the contract or agreement between you and Mr. Peter?

A. Conformed to the contract and agreement as I understood it; yes, sir.

Q. And what was it, as near as you can remember?

Mr. WALKER: I object as incompetent. I make an objection to all these questions.

A. I don't remember the whole detail of it fully, except as I explained it there; the transaction that I have had with Mr. Peter for $30,000 and that he took so much land, which he was to pay himself from and divide the balance with me.

Q. That was the memorandum, as near as you can remember?

A. That was the memorandum; yes, sir.

Redirect examination by Mr. WALKER:

Q. You have stated in your examination your somewhat embarrassed condition at the time you made these advances to Mr. Ward; will you state what was the inducement for your making those advances to Mr. Ward—what it had reference to?

A. My prospects of making some money.

Q. In what way?

A. Out of the pine lands.

168 Q. And what did you know about his necessities for money at that time?

A. I knew that a large amount of money had been advanced him by Sol. Gardner to hunt up and pay for witnesses, and that at that time Gardner had refused to give another cent; that at that time he had got to have money. He made certain promises to him he didn't carry out.

Q. At the time you took that deed you had not made many advances?

A. No, sir; a little

Q. You say you were not bound to advance over how much?

A. $20,000.

Q. And the rest of the advances were without any agreement?

A. Without any agreement.

Q. Had you any security then but the land for the advances you had made?

A. No other security.

ALFRED RUSSELL recalled for cross-examination.

Examined by Mr. GEER:

Q. How long had you known Mr. Cadman previous to the 25th of October, 1875?

A. I should say about 20 years.

Q. During that time had you been intimately acquainted with him?

A. I had done business as a depositor and customer at the different banks with which he had been connected with during that time.

169 Q. Had you acted for him at all, as counsel or attorney, or advised with him for 20 years?

A. I don't think I had.

Q. You don't recollect, then, of being his general adviser with reference to his matters?

A. I don't remember that I do.

Q. Then, about the first business relations that you remember of between you and him was when he applied to you to get a loan upon this land?

A. Not the first, because, being a depositor and customer in connection with the Merchants' and Manufacturers' Bank from the time it was started and from the time Mr. Cadman became cashier, I had frequently had occasion to act as counsel for the bank, and, acting as counsel for the bank, I would be brought into business relations with the cashier. Mr. Cadman would very often come to my office to ask me questions with reference to the business of the bank.

Q. Were you then the solicitor for the bank—attorney for the bank?

A. Yes, sir.

Q. And in that way do you recollect of having done any business for Mr. Cadman individually?

A. I think I had not to any particular amount, perhaps, but I think I must have.

Q. Had some?

A. Yes, sir.

Q. Did you have anything to do by the way of aiding him in the purchase of these lands from Milton Ward?

170 A. I can hardly say that I had anything to do by the way of aiding him; he spoke to me with regard to Ward's desiring to have money to fight the will of his father; Mr. Ward himself spoke to me in regard to that, and Mr. Ward had also spoken to me with regard to being his counsel in the will case; but my relations to the parties were such that I could not act.

Q. You were retained by Mr. Ward in the will case?

A. No, sir; I was so situated that I could not be retained on either side.

Q. You didn't take any part in that?

A. No, sir; didn't take any part in it.

Q. Did you aid Mr. Ward?

A. I did nothing which could be called taking a part; I knew that Mr. Ward wanted money very badly; I knew generally that Mr. Cadman was engaged in raising money for him; I knew that Mr. Ward was a wild, dissipated kind of a chap and had a good deal of property; that he was extremely anxious to break his father's will and thought he would make a good deal of money if he did, and I rather sympathized with him in his desire to break the will.

Q. Did you also know that Mr. Cadman was a speculator?

A. Well——

Q. Anxious to get into these projects?

A. No, I did not know that; I knew like everybody else he would not object to making a little money if he had the chance.

Q. Was Mr. Cadman reputed in these times to be a man of means?

171 A. I don't think he was reputed to be a man of——

Q. Wasn't it generally understood that he was very hard up?

A. No, sir; I don't think it was understood that he was very hard up; I didn't understand so; in fact, I knew he had control, in one way or another, of considerable sums of money, from this fact that he was in the habit of depositing money in my bank account in considerable sums—quite large sums of money—and of course in that way I could not help knowing that he had the control at any rate of a good deal of money, because when he would need money he would, of course, bring me checks to sign, if he had occasion to use it.

Q. In other words he used your name for his benefit?

A. No, sir; not my name.

Q. He used your name in making deposits and brought checks to you to sign them?

A. Yes, sir; but not for his benefit particularly.

Q. He did not deposit there for your benefit?

A. No.

Q. You don't know why he used your name, do you?

A. Simply because he considered that as cashier of the bank it was not desirable or prudent for him to have a bank account of his own.

Q. Did he ask your permission to deposit money in your name?

A. He did, certainly.

Q. Did he always come to you to have you check out this money?

A. Always.

172 Q. And you would check it out individually?

A. Yes, sir.

Q. He didn't sign your name?

A. No, sir.

Q. How long did that continue?

A. It continued a long time—as late as 1876.

Q. Up to that time that he left the bank, or about that time?

A. Yes, sir.

Q. Then that is all the business relation or transaction you had with him until the time he applied to you to make this loan, was it not?

A. I think so.

Q. About what length of time was it that he had money deposited in your name, as you remember, commencing when and ending at the time he left the bank?

A. It would be difficult for me to say. It must have been, off and on, at various times after the organization of this particular bank (the Merchants' and Manufacturers'); it must have extended over several years.

Q. That he did that?

A. Yes, sir.

Q. Do you think he did it occasionally during every year?

A. I think so; that is my impression.

Q. You have not looked to know to what extent?

A. No; but I feel very certain of that. I have made no examination; I feel very certain of it.

Q. Some time in October, 1875, you said, he applied to you to get a loan upon these lands?

A. Yes, sir.

173 Q. And he furnished you with a statement from Mr. Steele, I think he said, as to the amount of pine upon those lands?

A. Yes, sir.

Q. And acting upon that you tried first here in Detroit to get a certain amount of money; how much money did you want to borrow?

A. I think it was $30,000.

Q. And you were unable to get it here in Detroit?

A. I think I failed here in Detroit.

Q. And then you wrote to Dr. Ayer?

A. Yes, sir.

Q. After that had failed when was the first time that you saw Mr. Peter to have any talk with him concerning this matter?

A. It would be impossible for me to give the date except from the date of my letter you had here on the subject. I could not give you the precise day except from that.

Q. And that was either the 16th or 17th, as you stated before?

A. Yes, sir.

Q. Then you think that was the first time Mr. Peter had any talk with you concerning it?

A. This subject; yes, sir.

Q. That was as to the pine upon it, was it not?

A. No; as to the value of the property and the desirableness of the loan and the hope that Mr. Cadman might get it, and whatever would naturally be spoken of.

174 Q. Pertinent to Mr. Cadman's getting it from somebody else, nothing as between them?

A. Yes, sir.

Q. You did not see them again until the 25th, when the parties came there to make the deed?

A. I might have—I don't remember.

Q. Was there any conversation between the parties in your presence as to their bargain? It was not made there in your office, was it?

A. No; I think they had made their bargain before they came there; that is my recollection; and of course there was something said about it. The substance of it was that Mr. Peter had concluded to carry Mr. Cadman himself.

Q. I suppose you did not make a memorandum. Did this matter interest you at all except as an attorney in the case?

A. No, sir; it was of no interest to me, except from the fact that Mr. Cadman had been allowed to use my bank account, and had considerable sums deposited in it. I rather kept track of it; kept track of his use of money.

Q. But you were not to get any portion of the money in case he effected the loan from Dr. Ayer?

A. No, sir.

Q. All you would get would be your commission or pay for whatever trouble you would be subjected to?

A. Yes, sir; and I considered that the proceeds of the loan he would want to put into my account, and I think he did put one-half of the proceeds, in fact, into my account, and I, of course, kept more track of it than I would have otherwise.

175 Q. Now, the parties came in there with their bargain made. Do you recollect about what time of the day it was they came in first?

A. I think it was quite early in the forenoon.

Q. You had the deed drawn up?

A. I had the deed drawn up by one of the young men in my office; I think by Henry Russell.

Q. He also drew the mortgage there?

A. No, sir; the mortgage was an afterthought. The mortgage was drawn later in the day.

Q. The deed was drawn there at that time, between Mr. Cadman and Mr. Peter?

A. Yes, sir.

Q. Before it was drawn did you hear any conversation between them as to what their bargain was?

A. I think there was nothing said about that.

Q. What was said, as near as you can remember, between them, in your presence, when they first came in or when the deed was drawn there?

A. As near as I can recollect about that, Mr. Peter observed that he was very sorry that Mr. Cadman could not get the loan East, or here, and that he had concluded to carry Mr. Cadman himself.

Q. How much was he going to loan him?

A. As I understood, $20,000.

Q. And then what else was there between them spoken there?

A. That the amount which Mr. Cadman was already indebted to Mr. Peter would be secured by this transfer, the same as the amount which he was about to let him have upon those notes.

176 Q. Or in other words the deed was turned over to him to secure him for $30,000?

A. Yes, sir; that is my understanding of it.

Q. You understood that from the conversation between the parties?

A. Yes, sir.

Q. You had these papers prepared, and they went away?

A. Yes, sir.

Q. That is about all that occurred there at the time?

A. That is about all that occurred.

Q. You made no memorandum, I suppose?

A. No, sir; the only memorandums I had about the transaction was the letter I referred to the other day and the deposit in my bank account of the proceeds of the loan.

Q. On that day how much was deposited in your name?

A. There was nothing deposited on that day.

Q. You say there was something about a future consideration; what was there about that?

A. Well, it seemed that the two $5,000 notes—Mr. Cadman had already placed them to raise the money on them as I understood, and had been carrying them for some time—Mr. Peter had, and it was found to be impracticable to carry two for $10,000 besides upon the personal credit of Mr. Peter, and I was requested to prepare a mortgage myself for enabling the discount of the two $10,000 pieces of paper.

Q. What time in the day was that executed?

A. I think that was shortly before supper; that is my recollection of it.

177 Q. Some time in the afternoon?

A. Yes, sir; I think it was after the young men had left the office; so I prepared the document myself.

Q. Did Mr. Peter come back?

A. I think he did.

Q. You think Mr. Peter came in after that, or did Mr. Cadman come in and ask you to draw it up and ask you to take it out?

A. I am not positive about that; I think they both came.

Q. Your recollection is that you drew the mortgage?

A. That is my recollection. I may be wrong, but that is my recollection.

Q. Then the matter was concluded and settled?

A. Yes, sir.

Q. But the consideration for the deed—there was two $10,000 notes, is not that your recollection?

A. What?

Q. He gave him the two $10,000 notes you speak of to make up the consideration for the deed?

A. I have no recollection of saying that.

Q. But the understanding was there was to be two $10,000 notes?

A. Yes, sir.

Q. Do you recollect whether to be on long or short time?

A. I think Mr. Peter said the notes would have to be renewed from time to time; that he could not furnish the money to pay the notes in a good while; that they would have to run as the other notes had run.

178 Q. Was it to be bankable ninety days' paper, to be renewed every ninety days?

A. That is my impression; I have no distinct recollection.

Q. You knew they would have to be extended by being renewed?

A. Yes, sir; I know Mr. Peter said he could only give his credit; he could not furnish any money; the said note would have to run along.

Q. When next did you have any conversation with Mr. Peter concerning this matter?

A. I may have had. Mr. Peter was in town quite often. I used to see him in the street, in the bank, and at the exchange.

Q. Have you any recollection of having any subsequent talk with him about the matter?

A. I have no recollection of it; I may have had; it is quite probable I may have had.

Q. Did you continue to act for Mr. Cadman after that in this matter?

A. There was no acting to be had that I remember.

Q. Then you don't remember doing anything for him in this matter after the 25th?

A. No, sir.

Q. How long do you think the money remained in your name before it was checked out of the bank?

A. I could not tell.

Q. You have not examined your book?

A. I have not examined my papers; no, sir. If I could find my checks I could tell to a certainty.

179 Q. You have no knowledge when one-half of that $10,000 was placed in your bank account?

A. How, sir?

Q. Your recollection is that one-half of this $20,000 received on those notes and the mortgage was placed in your bank-book?

A. Yes, sir.

Q. Have you any recollection of when that was, with reference to the transaction?

A. It must have been shortly afterwards—within two or three days.

Q. Have you any recollection who got that money?

A. I have no personal knowledge of it.

Q. Did you have any interest in it.

A. Not in the slightest.

Q. Mr. Cadman went away and came back some time this last winter, didn't he?

A. Well, Mr. Cadman removed to California about six months after that, I should think, and has been in Detroit from time to time since, and in New York. He came to Detroit some months ago for the last time.

Q. You saw him some time in February or thereabouts—the last of January or February, 1881—didn't you?

A. I saw him almost every day up to the time that he removed to California.

Q. I am not speaking of California; I am speaking of the time he came back this last time.

A. I could not tell when it was; it was four or five months ago.

180 Q. On the 4th of February, 1881, you wrote Mr. Peter a letter; you remember that?

A. Yes, sir.

Q. With reference to that time, when did he come to you and employ you in this matter?

A. It could not have been long before I wrote the letter.

Q. Shortly before that?

A. Yes, sir.

Q. Do you recollect of having had any conversations with Mr. Cadman from the time he went away to the time he returned concerning this matter?

A. I think he mentioned it whenever he was here. He was here a good many times. In the interval I would naturally, I suppose, ask him how he was getting on and what he was doing, and he would naturally refer to his old matter here.

Q. When he came to you shortly before the writing of this letter he desired to retain you in this matter, did he?

A. Not exactly. He desired me to write a letter to Mr. Peter.

Q. Didn't he desire you to act for him in the matter?

181 A. He desired me to act for him in the matter, although I stated to him I could not act for him if there was any contest about it.

Q. He placed it in your hands for collection, didn't he?

A. He placed it in my hands for collection.

Q. Under what arrangement?

A. No arrangement.

Q. Was there any understanding as to how you should receive your fees?

A. Not a word.

Q. No understanding about your fees if the case was successful.

A. Not a word.

Q. In writing that letter to Mr. Peter did you write upon your recollection of the matter?

A. I think I did.

Q. Before writing it did you examine your books and memorandums for the purpose of refreshing your recollection as to the true condition of things between them?

A. I did.

Q. And what you wrote him in that letter was your understanding of the transaction between them?

A. I think it was.

Q. And at that time you were just as fully advised of what the facts were as you were the other day when you were examined, or to-day?

A. No, sir; no, sir; because before giving my testimony I made an additional examination of additional papers, which I did not succeed in finding before. For instance, I had not found the letters or correspondence of Dr. Ayer.

182 Q. That would not have anything to do with the agreement as between these parties—the details of that agreement?

A. No, sir; but it refreshed my memory with reference to dates and the general nature of the transaction, and I also examined my check books and bank account since then before testifying the other day for the purpose of refreshing my memory.

Q. I see you say from your letter that it comes to $28,000 cash; where did you get your idea of $28,000 there?

A. I got it from my general recollection and from the statements of Cadman as to the amounts of money which he advanced to Ward.

Q. Did you know anything about the dealings between Ward and Cadman?

A. I only knew them from Cadman's statements and Ward's statements. As I said before Ward often spoke to me. He was immensely sanguine about it and he had to have money.

Q. You had loaned him your credit on two notes of $5,000 each, and Cadman delivered you a deed of the land for $30,000, including the above notes, and you gave him two $10,000 notes. That was as you understood it then and as you understand it now?

A. Yes, sir.

Q. The agreement was that you should, from the profits realized, pay Cadman one-half after deducting $30,000 interest and taxes, and this agreement you acknowledged by letter in 1878, that you didn't speak from your recollection, did you?

183 A. No, I couldn't. As I understood it the consideration for the deed was that Peter could have the interest upon $30,000, whatever taxes he paid, and one-half of the surplus, whatever it might be, when the land should be sold.

Q. Any time specified within which it should be sold?

A. No, sir.

Q. That is, as you understand it now, the agreement between the parties?

A. Yes, sir.

Mr. Walker: I offer in evidence this paper, being one of the papers referred to by the witnesses Steele and Cadman.

(The paper is marked "A 2.")

(Exhibit "A" was produced by the defendant upon notice by the complainant.)

It is admitted by defendant's counsel that John Rankin, if sworn, would testify as follows, and this admission is to have the same effect as though he had given his testimony.

1st. That in 1873, 1874, and 1875 he was employed by Geo. S. Frost & Co. to examine timber lands and estimate the amount of timber thereon.

2d. That in 1873 and 1874 he examined the land in question in this case with great care, each forty by itself, for the purpose of estimating the amount and character thereon.

3d. That his estimate then made and entered upon his books *of* 49,000,000 upon the whole tract, but he understood that some of it had been cut over previous to October, 1875, but didn't know how much.

184 4th. That he estimates the value of land in October, 1875, at $1.50 per thousand feet for the lumber then remaining thereon.

The complainant then rested his case.

WILLIAM PETER, the defendant, then being called on his own behalf, first being duly sworn, testified as follows:

Examined by Mr. GEER:

Q. Where do you reside?
A. Toledo, Ohio.
Q. How old are you?
A. Fifty-six years old.
Q. You are the defendant in this case?
A. Yes, sir.
Q. Do you know Charles C. Cadman, the complainant?
A. Yes, sir.
Q. How long have you known him?
A. I have known him for twenty years.
Q. In what business was he engaged when you first became acquainted with him?
A. When I first got acquainted with him he was in the Michigan Insurance Bank, I think.
Q. Did you at any time in 1872 have any business deal with him?
A. Yes, sir.
Q. Will you state the nature of that deal—I now refer to your loan?
A. I let Mr. Cadman have my two notes for $5,000, making $10,000.
185 Q. At the time you gave him those notes, state what he wanted of them, what representations he made to you?
A. He said he wanted them to take stock in the Merchants' and Manufacturers' Bank; that he was liable to lose his position unless he could get more stock.
Q. What was the understanding between you and Mr. Cadman at the time with reference to his taking care of those notes and saving you harmless?
A. That he was to pay the notes, and the stock was to be considered mine until the notes were paid.
Q. He simply to have the benefit of voting upon them?
A. Yes, sir.
Q. How were those notes made, upon what length of time?
A. Three and four months I believe the first were.
Q. What was the arrangement between you and him about their being renewed from time to time?
A. He was to pay the interest. He thought he could pay them up in a year; reduce them from time to time.
Q. State whether those notes were renewed from time to time.
A. Yes, sir.
Q. Who paid the interest upon them?
A. Mr. Cadman.
Q. State whether he did reduce them any during the first year or not.
A. Didn't reduce them any.

186 Q. How long did you continue to renew those notes for him?

A. Until the fall of 1875, and I had to pay them then—in the fall of 1875 and the fore part of 1876.

Q. Do you recollect some time in the fall of 1875 of his informing you that he owned some lands purchased of Milton Ward, situated in Newaygo county?

A. Yes, sir.

Q. At what time did you commence to negotiate with him for the purchase of those lands?

A. I think it was in September when he first spoke to me.

Q. When he first spoke to you state whether or not he wanted to sell you those lands or obtain money from you and give you the lands as security.

A. He wanted to sell the lands.

Q. Did you subsequently make a purchase of those lands from him?

A. I did.

Q. On what day?

A. 25th day of October, 1875.

Q. At what place did you consummate the bargain with him?

A. In the Michigan Exchange the bargain was closed.

Q. Where did you first see him and talk with him concerning the purchase of these lands?

A. At the Merchants' and Manufacturers' Bank.

Q. On the 25th day of October, 1875, when you purchased of him, did you have any conversation with him at the bank?

A. Yes, sir.

187 Q. After talking the matter over there where did you then go?

A. Went to the Michigan Exchange.

Q. Were the terms agreed upon at the Exchange?

A. At the Exchange?

Q. Yes, sir. What was done with reference to having the papers drawn?

A. Mr. Cadman said that he would go and get somebody to make the papers.

Q. Did you go with him at that time?

A. No, but I came and met him at the Merchants' and Manufacturers' Bank again.

Q. Then what?

A. And he came and said the papers were ready, and I went with him to Mr. Russell's office.

Q. He informed you he had drawn them?

A. Yes, sir; we went to Mr. Russell's office [and] signed the mortgage. I took a deed and paid the money.

Q. Will you look at that and see if that is the deed of the lands that he gave you? (Showing a paper to witness.)

A. Yes, sir.

Q. At the time that deed vas drawn state whether there was a mortgage prepared for you to sign and give him to secure the purchase-money.

A. Yes, sir; I signed this mortgage, and then I took the deed and gave him the notes.

Q. Look at that and see if that is the mortgage. (Showing paper to witness.)

A. Yes, sir; that is the paper. (Exhibit "6" is the mortgage shown the witness.)

188 Q. Will you look at those notes and see if those were given at the same time as the mortgage which was given to secure them?

A. Yes, sir; I made them myself.

(The notes are here offered in evidence and are marked "B 1, B 2, B 3, B 4.")

Q. State if those notes were subsequently paid by you and taken up.

A. Yes, sir.

Q. Who held them when you paid them?

A. Mr. Butler had two and the Savings Bank had two.

Q. What conversation, if any, did you have in the presence of Mr. Russell with reference to the bargain between you and Cadman?

A. Not any.

Q. What conversation did you have with Mr. Russell concerning this matter, if any?

A. Hadn't any with him. When I took the deed and gave the mortgage, I says, I suppose, Mr. Russell, those papers are all right, as they should be, the same as I would ask anybody. He said they were. I signed my notes, took the deed, and went out. I guess I wasn't in Mr. Russell's office more than 10 minutes.

Q. Were you there more than once on that 25th day?

A. No, sir.

Q. What was the consideration paid by you to Mr. Cadman for this land; what was the amount?

A. $20,000.

Q. At the time you made this purchase, you say these two $5,000 [notes] had not been paid by Mr. Cadman?

189 A. No, sir.

Q. Did you have any conversation with Mr. Cadman from whom he purchased these lands?

A. Yes, sir.

Q. From whom did he state?

A. Milton D. Ward.

Q. Did he inform you how much he paid for them?

A. No, sir; he said to me if I would buy these lands from him at $20,000 he would make $2,000. I asked him if this $2,000 would apply on the $10,000 which I loaned him the notes for. He says, "Certainly; that is what I want to make some money for, to get that $10,000 out of the way."

Q. What arrangement was made, if any, between you and Mr. Cadman on the 25th, when this deed was given to you, with reference to your having it or holding it as security?

A. There was no such talk; never heard of that until I heard it here in the room.

Q. You heard his testimony in this case?

A. Yes sir; I did.

Q. State whether there ever was any arrangement made between you and Mr. Cadman by which you were to take these lands as security for those $5,000 notes and the $10,000?

A. No; but he did agree—he said when he negotiated them for the $20,000, he would apply $2,000 of it when the first $5,000 note came due which I loaned him.

Q. What did he say about paying the balance of the $10,000?

A. He would pay it as soon as he could.

190 Q. From the 25th day of October, 1876, when the deed was given to you, when was the first time that Mr. Cadman ever made any claim to you that this land was deeded to you as a security?

A. He never has claimed it to me at all. The first I ever heard was when Mr. Russell wrote me.

Q. That letter of the 4th of February, 1881?

A. 1881.

Q. You heard his testimony with reference to having written you a letter in 1878 from California, did you?

A. I did.

Q. State whether you ever received any letter from him in 1878.

A. No, sir; I did not.

Q. Did you at any time ever write any letter in which you said to him you had not sold the lands and therefore could not divide?

A. No, sir.

Q. Did you hear the testimony of Mr. Russell with reference to your being at his office on the 15th or 16th of October, 1875?

A. I did.

Q. State whether you were in his office on those days.

A. I think I was not in Detroit on those days.

Q. How as to being in his office on those days?

A. No, sir; not at that day or any other, only when I signed the mortgage and made those notes; not once. In 1872 I was twice in Mr. Russell's office in my life, and no more.

191 Q. State if you said to Mr. Russell on the 15th or 16th of October, 1875, that you were acquainted with these lands and that they were worth $120,000.

A. Never did say so, because I couldn't; because at that time I didn't know what they were worth. My man had not got back from the woods yet.

Q. Before you made this purchase from Mr. Cadman state whether you sent some men there yourself.

A. Yes, sir; I sent them myself.

Q. Had they returned and reported before you made the purchase from Mr. Cadman?

A. Yes, sir; a few days before I bought the land.

Q. Will you state as to whether Mr. Cadman subsequently paid these two $5,000 — outside of this land purchase?

A. No, sir; never paid a dollar of it.

Q. Who did pay it?

A. I paid them—was obliged to.

Mr. GEER I offer in evidence the assignment made by Mr. Cadman on this same mortgage.

The assignment is marked "C 1," and admitted without objection.

Defendant's counsel also offers in evidence the discharge of mortgage from the bank to Peter, marked "C 3," and the same is admitted without objection.

Defendant's counsel offers in evidence the paper heretofore marked "A 1," and [it] is admitted without objection.

A paper heretofore marked "Exhibit 7" is now offered in evidence, and is admitted without objection.

192 Q. I desire to call your attention to certain conversations Mr. Cadman claims to have had with you between the 25th day of September, 1876, and some time in the spring of 1877, when he went to California, in which he said he had a talk with you frequently concerning this matter, or at different times?

A. From 1876?

Q. From 1875. From the time you purchased the land; from that time till some time in 1876, when he said he went to California. You remember that he stated he saw you at different times here in Detroit; that you and he talked this matter over and you recognized his interest in these lands?

A. Oh, yes; I seen Mr. Cadman in the bank often for a number of times, but there was no such talk had.

Q. I also ask you the direct question between the making of this deed in December and when he went to California; I also ask you whether you had any conversation with him concerning those lands in which you recognized his having interest in them?

A. Never. Didn't at that time or any other.

Q. Do you recollect his coming to your office in Toledo some time in January or February last?

A. Yes, sir.

Q. State if you and he had some conversations at that time concerning these lands—concerning matters?

A. Mr. Cadman came there, as I supposed, for a visit; talked about various things. Finally he said he thought I had done pretty well on these lands and asked me if I could not afford to give him something. I told him no, I could not give him anything. Well, he
says, of course, you are under no obligation, but I thought you
193 would be liberal enough to give me something; he says if you
don't want to give me anything, make me a loan. He had a patent right on which he wanted to make some money, and asked me if I would not loan him $300 to $500. We talked about it a few minutes and then talked about other things, and it was evening and I says, Mr. Cadman, are you going home to-night? He says no. Well, says I, come around to-morrow, I will think it over and I will see what I will do. In the morning he came around and I says, I have looked this thing over; your speculations which you go into are not very safe, would not be safe to loan money on, and it would prob-

ably be all the same as the others. I would not give it away anyway; if I had anything to give away I had better give it to my friends. I have some poor friends in Europe. That was the last. Just about as he was coming I was going away in a cutter.

Q. Are you acquainted with Charles C. Cadman's handwriting?

A. Yes, sir.

Q. Have you seen him write frequently?

A. Yes, sir; a good many times.

Q. Will you look at that and see if that is his handwriting or not? (Handing a paper to the witness.)

A. Yes, sir.

Q. Have you seen him write frequently?

A. Yes, sir; a good many times.

Q. Will you look at that and see if that is his handwriting or not?

A. Yes, sir; I am certain of that.

Q. Is that his signature?

A. Yes, sir.

Q. That is his handwriting in the letter?

194 A. Yes, sir; his handwriting.

The defendant's counsel offers in evidence the letter just shown the witness, bearing date January 13th, 1876, and the same is marked "B 1" and admitted, the following being a copy:

Detroit, *January* 13, 1876.

My Dear Sir: Can you send me two notes of $5,000 each, with interest at ten per cent., with some endorser, that I may be able to retire the two notes which you gave me yesterday without any failure? It pains me much to ask this, but you know how people are stirred up from the bottom, and this paper must be paid promptly without any delay, sure. I have not heard yet from Ann Arbor, but will in the morning.

Very respectfully yours, CHAS. C. CADMAN.

In two months money and the people will be easy.

Defendant's counsel offers in evidence another letter, marked "E 1," which is admitted, and the following is a copy:

Detroit, *January* 21, 1876.

My Dear Sir: Being unable to-day to get extended at the First National the note due to-day, I have lodged as collat. the note of $5,000 and interest with the People's Savings Bank, and have given them a draft at one day's sight on you for $5,000. I herein enclose the two old notes cancelled, and expect that I shall use the notes at the People's Bank to-morrow or Monday. O'Brien said he thought Mr. Carpenter would want it; therefore please accept draft when presented. I, of course, did this to save dishonor to your good name.

Hastily yours, CHAS. C. CADMAN.

195 Q. Look at that and see if that is the draft drawn on you at the time referred to in that letter.

A. It is. I didn't accept it myself. It was accepted and I paid it.

The draft is marked "F 1" and offered in evidence, the following being a copy:

DETROIT, MICH., *Jan.* 21, 1876.

No. ——. $5,000.00.

At one day after sight pay to the order of the People's Savings Bank five thousand dollars, with interest from date of maturity at the rate of ten per cent. per annum, and charge to account of—

CHAS. C. CADMAN.

To William Peter, Esq., Toledo, Ohio.

Endorsed on face of draft: "Accepted Jan. 22d, 1876. Wm. Peter, La."

Stamped on face of draft: "Second National Bank. Jan. 25th, 1876. Paid."

Endorsed on back: "C. F. Adams." In red ink: "Jan. 26."

Mr. GEER: I next offer in evidence a letter written by Wm. Peter to Cadman, bearing date January 22d, 1876, of which the following is a copy.

The paper is marked "F 2," and is objected to as incompetent.

Q. Will you state whether you made that copy or not from your letter-book.

A. Yes, sir.

Q. Is it an exact copy of the one that you sent to Mr. Cadman on that date?

A. Exact—word for word. It has been in the water; that is what makes it so dim.

The paper referred to is marked "G 1," of which the following is a copy:

196 TOLEDO, O., *January 22d*, 1876.

Mr. C. C. Cadman, cashier.

DEAR SIR: Yours of yesterday, with the old notes, is received, contents of which strike right home. I accepted your draft this morning. What do you think of making a draft on me at one day for $5,000.00? I do not have the money to pay this draft. This shows for itself how my notes are peddled in Detroit. I have told you before that my credit will suffer from such transactions. You say you did this to save my good name. This is a most cruel assertion to me, under the circumstances, as I derive no benefit from it. Let me know at once if I must raise the money to pay this draft. I have $5,000 to pay to your bank the same day. I want you to send me something to show that the two notes and this draft are for your benefit, and for you to pay it in case I should be taken away, which we are all liable to be. My estate should have something to show—in fact, I myself should have it.

Yours respectfully, WILLIAM PETER.

Mr. Geer: I next offer in evidence a letter bearing date January 24th, 1876, written by Cadman to Peter, and marked "Exhibit G 2."

Letter is admitted and marked "G 2," of which the following is a copy:

Detroit, *Jan.* 24, 1876.

My Dear Sir: Yours 23d inst. at hand; contents noted. I am sorely mortified and grieved that this should be the case, but I am entirely powerless to act. I think I can get the money on the other note in time to recall your acceptance. I have not peddled your notes. Mr. O'Brien some time ago asked me for some of your
197 paper; therefore I went to him. I shall try and get the money,
but if I do not you can draw on me at three days' sight, and I will get the money in meantime on the note. I hardly know what to do. I will do anything in my power. I will send you my notes or anything I have.

Yours, very respectfully,

CHAS. C. CADMAN.

Mr. Geer: I next offer in evidence a letter written January 28, 1876, from Peter to Cadman in reply to the one of the 27th.

The letter is marked "G 3," and the following is a copy:

Toledo, O., *January 28th*, 1876.

Mr. C. C. Cadman, cashier.

Dear Sir: Yours of the 27th is before me; contents noted. In reply must say that I overlooked the cashier part of it. It has harassed me so much that the last week or ten days *as* I hardly know what to do or think. I have my own debts to pay and losses to meet from my business, and then have those notes floating about. I will make another draft on you this morning in place of the one protested.

Yours respectfully, WILLIAM PETER.

Mr. Geer: I offer another letter in evidence from Cadman to Peter, dated January 27th, 1876.

The letter is admitted and marked "H 1," the following being a copy:

Detroit, *Jan. 27th*, 1876.

My Dear Sir: I enclose herein, cancelled, your note, $10,000.00, Jan. 23d, in N. Y. I much regret that you should have made the three days' sight draft on C. C. Cadman, cashier, as the bank cannot accept drafts, and have nothing to do with this; therefore draft will have to go to protest for non-acceptance. If you had made it on me personally I could have accepted it and made it O K, I think, by maturity.

Hastily, C. C. CADMAN.

198 Mr. Geer: I offer in evidence a letter from Cadman to Peter, bearing date January 30, 1876.

Letter admitted in evidence and marked "H 2," the following being a copy:

DETROIT, *Jan.* 30, 1876.

MY DEAR SIR: I return your note, $5,000, herein. I cannot use it except to discredit you still more. I have resigned; am a ruined man; have lived here twenty-two years; always tried to do right, but have got behind a little by little year after year. I have not a dollar, only some Northern railroad stock. I am not behind a dollar in the bank; all of our accounts, &c., are O K, but I owe so much money outside that I cannot stand the pressure. They cut down my salary, &c., some $900 per year. My family have gone in the country to board, and I am ruined and penniless. I console myself in your case that the great bargain you made in the Newaygo lands will in some great measure compensate you for the loss you must incur, for I cannot take care of the acceptance due early in February. I could have got 2 or $3,000 on your note yesterday, but that would only have led to more complications, and now leave with barely $30 in my pocket and nothing to fall back on.

Hastily and in sorrow,

CHAS. C. CADMAN.

Cross-examination:

MR. WALKER: When did you become a stockholder in the Merchants' and Manufacturers' Bank?

A. I should think it was in 1871; perhaps before; it might be a little later.

Q. How much stock did you own there?

A. $10,000.

Q. Mr. Cadman was then cashier, was he not?

199 A. Yes, sir.

Q. From that time to the time he left was you not personally very intimate with Mr. Cadman?

A. Sir?

Q. Were you not personally during the whole of the time, from that time to the time Mr. Cadman left, very intimate with him?

A. Yes, sir; yes, sir.

Q. You entrusted [him] with your proxy, did you not?

A. Yes, sir.

Q. Were you not in the habit of getting frequent accommodations at the bank?

A. How do you mean, borrowing money there?

Q. Yes, sir.

A. Oh, yes, a good deal.

Q. Were you not in the habit of borrowing money upon notes made by your book-keeper and endorsed by you?

A. I guess but once; I might one.

Q. Only once?

A. It might be oftener; not many times.

A. Were you not in the habit of getting the notes of a Mr. Lewis and endorsing them and getting the money upon them?

A. Lewis and I had a great deal of *deal.* Mr. Lewis has owed me for the last twenty years; owes me to-day. When I want any money I get it and give him my note, and the same way if he wants money of me. If he can pay it he pays it; if he don't I pay it myself.

Q. You say he was always owing you?

200 A. He has owed me for the last twenty years; never has been out of my debt and owes me to-day.

Q. You were a good deal embarrassed in 1875, were you not?

A. Owed a good deal of money, Mr. Walker.

Q. And then afterwards you lost considerable, did you not?

A. Lost a great deal of money.

Q. When did you first know of any negotiation between Mr. Cadman and Mr. Ward about the purchase of these lands from Mr. Ward?

A. Not until Mr. Cadman spoke to me about selling them to me; I didn't know anything about it; never spoke to him; I think Mr. Cadman spoke to me.

Q. You had heard about the purchase before that?

A. No, sir.

Q. What, in September?

A. I should think it was the fore part of September, from the 10th to the 15th.

Q. At that time did he make you any offer at what price he should sell you the lands?

A. No, sir; not to my recollection; the first time he spoke to me about it I told him I had no money.

Q. That is all that passed between you?

A. Perhaps a few more words, but that was the substance of the conversation.

Q. That was the substance of it; he wanted you to buy the lands; you told him you had no money?

A. No money.

Q. When did he next speak to you about buying the lands?

201 A. I think it was in September, towards the last of September, I should think between the 20th and the 30th.

Q. Then what passed between you?

A. I asked him what he would sell the land for.

Q. And he asked $20,000?

A. That was all he asked; I told him if I had the money and found the lands as good as he said I would buy them.

Q. Who was present at that conversation?

A. Not anybody.

Q. Where did it take place?

A. In the bank

Q. Did he about that time or soon after say anything to you about making an effort to borrow money upon the land?

A. Yes, sir.

Q. He was making an effort to borrow money?

A. He said he had made an effort to borrow money; but he could not get it; therefore wanted to sell them.

Q. When did he tell you that?

A. I think it — last part of September.

Q. Was this the time that you mentioned when he said he would take $20,000?

A. Yes, sir.

Q. He said he had tried to borrow money and could not?

A. He had some parties then he said, but he had failed up to that time.

Q. Did you know of his attempting to negotiate a loan through Mr. Russell?

202 A. No, sir.

Q. When did you next speak to him about the lands, after this interview of September?

A. I think he spoke to me in the fore part of October.

Q. What passed on that occasion?

A. He said he had got to do something. He said he thought I ought to buy them, and that the land was cheap from what he knew. He said there was a great deal of money in it.

Q. Anybody present at that conversation?

A. No, I think not. All the talk I had with Mr. Cadman about the lands was at the bank and at the Exchange.

Q. How long before the 25th of October since you had had a conversation with him?

A. Between the 8th and 10th of October. I have said to Mr. Cadman if he would give me time till I could ascertain if them lands were as he recommended them that I would try and buy them. He said to me he would make $2,000 out of the land if he sold it at $20,000.

Q. It was at that time he made that remark?

A. Yes, sir. I had asked him if this $2,000 would apply on those two $5,000 notes. He says certainly, that is what I want to make money for, to get those notes out of the way. On the 12th or 13th I sent a man in the woods.

Q. I am not asking you about that. If you will answer my questions I will be obliged to you.

A. I thought you said to go right on.

Q. What time in the day was it on the 25th when he spoke to you?

203 A. The 25th?

Q. Yes, the day the papers were made?

A. I came from Toledo here. It was in the afternoon when we first talked. It was about the closing of bank hours.

Q. On the 25th?

A. On the 25th.

Q. You mean after the bank had closed for the day?

A. Yes, sir; for the day. And we went from there to the Michigan Exchange; made our trade.

Q. And then you went from there to Mr. Russell's office?

A. No, didn't go together. Mr. Cadman then got the papers made.

Q. Did you know where he was going to get the papers made?

A. I think he said that he would go to Mr. Russell's and get them made.

Q. Did you make an appointment to meet him there?

A. I met him at the bank.

Q. What time did you meet him at the bank?

A. I should think it must have been after four o'clock somewhat, half-past four. I should think from four to half-past four.

Q. From there where did you go?

A. From there we went to Mr. Russell's office.

Q. Were the papers all drawn at that time?

A. Yes, sir.

Q. Ready for execution?

A. Yes, sir; except the notes I made.

204 Q. Were they made at the office?

A. No; they were made at the bank. We made the notes in the bank and took them there.

Q. Before the mortgage had been drawn the notes were made?

A. The deed was there.

Q. But the mortgage had also been drawn there?

A. The deed and the mortgage was ready when we got there.

Q. You made the notes and took them over there?

A. Yes, sir.

Q. Who was present at the execution of those papers at Mr Russell's office?

A. I think Mr. Russell was there.

Q. Mr. Alfred Russell?

A. Yes, sir.

Q. Was anybody else there?

A. Not that I know of.

Q. Do you know who witnessed the papers?

A. No, sir.

Q. Do you know how it came about that one of the witnesses who witnessed the deed did not witness the mortgage?

A. I don't know; the papers were all prepared when I came there. All I had to do was to sign the mortgage and give the notes. That was all that was done.

Q. Did Mr. Cadman sign the papers at the same time?

A. No, sir; it was already signed.

Q. The deed was signed?

205 A. Yes, sir.

Q. You don't know when he signed that?

A. No, sir.

Q. And the whole negotiation was after the closing of banking hours—the preparing of the papers and all?

A. Yes, sir.

Q. What time did the bank close at that time?

A. I guess it was three o'clock.

Q. Wasn't it four?

A. Maybe it was four.

Q. Then the negotiation, his going to the office, your meeting him at the bank, and then going to Mr. Russell's office, all took place after banking hours?

A. All took place after banking hours.

Q. How long were you at the Exchange in making the negotiation when you went there that afternoon?

A. We made the bargain as we went along. We went down there to get something to drink.

Q. Did you make your bargain at a saloon?

A. No; we made it as we went along; in fact, as we left the bank the bargain was all talked up. We went down, got something to drink, went back, and the papers were made.

Q. Were the notes made for $10,000 each and then changed to $5,000?

A. No, sir.

The hearing was then adjourned until 9:30 to-morrow.

JULY 15th, 1881.

CHARLES C. CADMAN recalled for further cross-examination:

Examined by Mr. GEER:

206 Q. Do you recollect about the time that you closed business—when you failed, as it is termed?

A. What do you mean, sir—at the time I resigned from the bank?

Q. Yes; I think you stated that in your direct examination. I want to fix the date.

A. I know I stayed in the bank three weeks after I resigned.

Q. But do you recollect, during the last days of January or the first days of February, of having a business transaction along with the Savings Bank?

A. I don't remember the time.

Q. Do you remember borrowing from them, upon your own personal check, $5,000, at or about the time you resigned your position in the other bank?

A. No; I don't think I did; I don't remember.

Q. In order to fix the date, I will ask you if you didn't on the last days of January, or the first of February, 1876, borrow from the Savings Bank or from Mr. Adams, the cashier of that bank, $5,000 on your personal check simply "to carry you over," as you term it?

A. No, sir; I did not; I may have borrowed—I don't remember any such amount as that; I think I borrowed about $2,200 somewheres along about those days; put up collateral to it; I borrowed nothing except upon collateral.

Q. At the time you borrowed do you remember what collaterals you gave?

A. I think I gave him a note of A. A. Turner for $2,500.

Q. And one signed by somebody at Trenton?

207 A. Arthur Edwards.

Q. Was that at the time you borrowed the money that you left these collaterals?

A. I think so.

Q. Now, to refresh your recollection, wasn't it shortly after you borrowed this money that you failed, was embarrassed, and informed them that you had failed?

Mr. Walker: We object to this as incompetent and immaterial and has nothing to do with anything here.

Mr. Geer: I will *con*nect it; it is more to fix the date than anything else; do you remember that?

Mr. Walker: It *is* nothing to do with this controversy.

A. I remember $2,200; I don't remember just exactly how long it was; I had often accommodated Mr. Adams and Mr. Adams had accommodated me.

Q. Do you remember going in there shortly after you got the money, at the time Mr. Walker was in the bank there, and didn't they then ask you to put up some collaterals to secure the payment of this check?

A. I don't remember about that.

Q. And didn't you then and there state to Mr Walker and Mr. Adams that the only securities you had was this Turner note and this Kellogg note endorsed by Edwards?

A. I remember there was some conversation, but I don't remember just what the connection was.

Q. Do you recollect of their pressing you for other collaterals to pay that debt?

A. After I resigned, yes, but not until after I resigned.

208 Q. That would be some time in February, wouldn't it?

A. I think February.

Q. Did you not state to them at that time when you went in there that they were the only collaterals you had to secure them with?

A. I might have done so; I don't remember exactly about it. I have forgotten about the times and the conversations, but I remember the money and one thing and another, but I don't recollect exactly about the times.

Q. Do you remember whether you did or did not so state to them?

A. No; I cannot tell you.

Q. If you claimed any interest in the Newaygo lands, why didn't you so state to the bank officers?

A. Because they had nothing to do with it whatever.

Objected to as incompetent.

Q. You did state to them those were the only collaterals you had, didn't you?

A. Only collaterals available. That is what I said if I said anything.

Q. Do you remember from whom you obtained the loan of $10,000 upon these notes and this mortgage?

A. The Detroit Savings Bank.

Mr. Walker: We went over that yesterday.

Q. Now, I ask you if you didn't make the application to Mr Walker?

A. I thought it was Mr. Adams. It possibly may have been Mr. Walker. I know I don't remember of having any conversation with Mr. Walker about it until after I had resigned from the bank, and I came right over and talked with him about it.

209 **Redirect examination:**

Mr. Walker: Do you remember any circumstances connected with the day on which the deed and mortgage was executed, the 25th of October, that enables you to say what part of the day Mr. Peter was here?

A. Yes, sir. He went to my house to dinner that day, and the deed was executed at my house during that time he was there by my wife. I mean she signed the deed.

Q. It had not been drawn up in the morning then?

A. Yes, sir; or about the noon hour probably. He went to dinner with me.

Q. What was your dinner [hour] at that time?

A. Half-past twelve to one o'clock.

Q. What was the time the banks closed at that time?

A. It closed at four o'clock.

Q. I mean in the day?

A. It closed at four o'clock in the afternoon.

Q. What can you say about your having gone down to the Exchange with Mr. Peter that day after having closed the negotiation with reference to this matter?

A. I went down to the Michigan Exchange; met him there; told him I could not use those notes; they were too long a time to use them, he would have to put a mortgage with them in order to float them.

Q. That was after the close?

A. That was after the close of business hours.

Recross-examination:

Q. What is it that refreshes your recollection about his going to your house that day to dinner?

210 A. I testified so in the first place; my first testimony shows it.

Q. Did you testify that he went to your house to dinner?

A. Yes, sir.

Q. Is that all that refreshes your recollection?

A. I have been studying about the circumstances; I remember about it since, of the fact that Harry Russell came there during the noon hour to take my wife's acknowledgement.

Q. Mr. Russell did not go with you when you went home?

A. No, sir; he went down to Alfred Russell's to dinner that day, and during the noon hour he came over to my house to take the acknowledgement.

Q. How far did he live from you?

A. Two doors.

Q. How far did you live from the bank?

A. Between 4th and 5th of Lafayette Ave.

Q. The bank you were then in was situated in what is called the Seitz Block;

A. No, sir; the Buhl Block, right next to the Second National Bank.

Q. Mr. Russell's office was nearly over your bank?

A. No, sir; in the Seitz Building, right next to the post office.

Q. Only a short distance from the bank?

A. In the same block.

Henry N. Walker sworn on behalf of defendant:

Q. Where do you reside?

A. In the city of Detroit, sir.

211 Q. How long have you lived in the city of Detroit?

A. Well, sir, it is betwen 46 and 47 years; it will be 47 years on the first day of October.

Q. What is your business, and what has it been?

A. I have been in all sorts of business; I am a lawyer by profession; I have been connected with railroads and banks.

Q. Have you been connected with the Savings Bank?

A. Yes, sir; ever since it started.

Q. What official position did you hold in that bank in September, 1875?

A. Vice-president and director.

Q. At any time since its organization have you had your office in the bank there?

A. Yes, sir; I held my office in the bank from the 5th or 6th of September, 1875, until the first day of this present July.

Q. While you were holding that was there any special matters that was referred to you?

A. All matters relating to the loans on real estate, directly or collaterally, and all ordinary legal questions were referred to me.

Q. Do you know Charles C. Cadman?

A. I know him.

Q. Do you know William Peter, the defendant?

A. Yes, sir.

Q. Have you known each of them some length of time?

A. A good many years; 20 years and upwards, both of them;
I think 26 years I have known Mr. Cadman; I don't know
212 how long I have known Peter; since the flood, I guess; I was
vice-president also of the Insurance Bank and Mr. Cadman
was a clerk.

Q. Do you recollect at any time in the month of October, 1875, when Cadman applied to your bank for the purpose of making a loan?

A. Yes, sir.

Q. Can you state what date it was?

A. I cannot state what date it was, excepting from this circumstance. It is a practice in the bank, and we have a book called an application book, in which when any person makes an application, especially for a loan upon real estate, that application is entered in that. For instance, we will say Charles I. Walker applies for $5,000 or $10,000 on his house and lot on Fort street. That application—we intend to enter all loans, unless it is the mere ordinary course of business of some old depositor. But as a rule every application is entered there.

Q. Have you examined that application book for the purpose of ascertaining when Cadman applied to you in the month of October for a loan?

A. Yes, sir; I have.

Q. Do you find upon examination of that so as to refresh your recollection what day it was?

A. I find an entry in that book, in my handwriting, made on the 28th day of October, 1875, application of Mr. Cadman to borrow $10,000 on the notes and mortgage of Mr. Peter.

Q. The defendant?

A. The defendant.

Q. Do you recollect——

A. Yes; I remember all about it.

213 Q. Will you state that conversation you had along with Mr. Cadman with reference to how he came possessed of those notes and the mortgage?

A. Well, sir, I only asked him such questions as ordinarily I ask a person under those circumstances. I asked the origin of the transaction. I knew Mr. Peter very well and my recollection of it, recollections of the conversation, was to this effect: That the bond and mortgage or the notes and mortgage of Mr. Peter were made in payment of some pine lands that I understood Mr. Cadman to say he had negotiated the sale of, the lands having belonged to Mr. Ward, and he was employed to negotiate the sale of them, and he conveyed and sold them to Mr. Peter, and that this note with another note, the notes given [in] payment of it and secured by this mortgage, were the transaction.

Q. Did he state in that matter how he expected to make anything out of the sale to Peter?

A. My recollection is that he stated he was acting as the negotiator for Ward, and that he expected to get a good handsome commission out of it from Mr. Ward. I cannot tell you. I have tried to see if I could get any memorandum or anything that would refresh my memory as to the amount, but I don't find anything that gives me anything at all. I have an impression in regard to what he stated, but I cannot state positively that the amount he was to get out of it was either a sum certainly over $20,000, or that he was to get a commission somewhere from 2,000 to 5,000 dollars if he could sell. I think, however, that the statement was that he was to get a commission. It is a mere bare impression. I cannot tell you whether it was 2 or 3 or 4 or 5 thousand. If I was to say what my impression was I should say it was $5,000. I would not say that he was to have $5,000.

214 Q. But it was something?

A. He was to get some compensation from Ward for making the negotiation.

Mr. Walker: I object to the interpolation in the testimony of the witness [of] the remarks of Mr. Geer, assuming that it was some amount. The witness has not said so.

The Witness: No; I didn't say that I knew it was $5,000. I didn't say so. I didn't mean it shall be put in my mouth to say that I know it was some amount, because in all these real estate matters—I had only recently gone into that bank in that capacity—and all real estate matters, all real estate loans with the security, and the litigation in respect thereto, as you may know in some cases comes to me, and it was upon my report, and my report only, where the real estate was in town, upon my report of the value of the real estate that they ever made any loans, unless I was out of town, and the application was upon these notes and mortgage of Mr. Peter's, but the decision was after my examination of it, after my examination of Mr. Cadman. The decision was that they would not loan Mr. Cadman on this paper with his endorsement, but they required Mr. Cadman's note, and this note of Mr. Peter's and a mortgage with the assignment of the mortgage was taken as collateral.

Mr. Geer: See if that is the note made by him and those are the two notes turned over. (Shows paper to witness.)

A. No; I would not be able to tell you whether they were the notes or not.

Q. Do you remember the fact that some time in January or February, 1876, Cadman had also obtained some money from the bank through Mr. Adams upon a check or draft of his?

245 A. Yes, sir.

Q. Do you remember the amount or nearly so?

A. I cannot tell you the exact amount, whether it was $5,000 or $10,000. I don't know. I don't remember the particular amount.

Q. Do you recollect after that hearing of the fact that he had failed, become embarrassed, and had resigned his position in the bank he was at work for?

A. Yes; within a day or two after that he had some difficulty with his directors and resigned his position, and was unable to pay our bank the amount of money.

Q. Do you remember his coming there for the purpose of trying to arrange and pay your bank?

A. Yes, sir.

Q. What, if anything, was done by your bank toward pressing him and asking him for security?

A. Well, sir, Mr. Adams and myself both were very urgent that he should pay it; pay the amount, because it was an honorary loan more than ordinary.

Mr. Cadman: Confidential.

A. Yes, it was confidential on his part. He came in and wanted this and it was taken informally without going before the board. The money was loaned him as cashier or on his check individually, I don't know which, but it was just as we did with all cashiers that we had confidence in. If they came in for 5 or 10 thousand dollars we would take the check as a memorandum check and put it in the cash for the time being and let them have the money, and under the circumstances, Mr. Adams, who let him have the money, was extremely anxious, extremely urgent, that he should pay the check or pay the money.

216 Q. What did he then say with reference to the payment of it or securing it?

Objected to as immaterial and incompetent.

A. He said that he was very much embarrassed, indeed, and that he would do the very best thing that was in his power to do; give us any security that he could give us to pay the money.

Q. Did you then inqure of him as to what securities he had to turn over to you?

Objected to as leading and incompetent.

Q. What inquiries, if any, were made then of what he had to secure the bank with?

A. Well, sir, there was a good deal of conversation about it as to what he could do.

Q. What did he say?

A. And he offered to turn out the papers of—I think there was some paper of Mr. Kellogg. Wasn't it Kellogg?

Mr. Cadman: Yes, endorsed by Edwards & Turner, and the note of Turner?

Mr. Walker: This is all taken subject to objection.

The Witness: There was some $3,000, a little over $3,000, of Kellogg's paper, and then there was a piece of paper with Turner——

Mr. Cadman: That is all.

The Witness: Enough to make up about the amount. I don't remember how much that amount was. Was it $5,000?

Mr. Cadman: That was only $2,200.

The Witness: What amount of money you had?

Mr. Cadman: Yes, sir.

217 Mr. Walker: You had better let Mr. Walker testify; you are not on the stand.

Mr. Cadman: All right, I will take it all back.

Q. When pressed there, state if he made any claim to any interest in this land that he sold to Peter.

Objected to as incompetent and leading.

Q. What, if any, claim was made by him at that time as to his having any interest in any lands that he had sold to Peter.

Same objection.

A. To my recollection nothing was said, or no claim was made that he had any interest in these lands whatever.

Q. Do you remember after these two notes had been left with you, and the mortgage being assigned to your bank, of Mr. William A. Butler coming there to see you with reference to it?

A. Yes, sir; I do.

Q. Do you remember whether he came alone or Mr. Cadman with him?

A. My impression is that he came alone, but I am not sure.

Q. Did you learn from Mr. Cadman at any time about having negotiated two more notes secured by this mortgage to Butler?

A. I understood from Mr. Cadman that Mr. Butler might call upon us to make inquiry about the mortgage that secured the balance of the notes mentioned in the mortgage that we didn't hold, and requested me to state that we had an assignment of the mortgage.

Q. And you think that was before or after Butler called upon you?

218 A. I think the request for Mr. Cadman to give Butler the information was before Butler called.

Q. When you talked with him with reference to these securities, the Kellogg note and the Turner, didn't you know they were questionable as to being good?

Objected to as incompetent and immaterial.

A. We didn't consider them very good.

Q. And did you at that time press him and ask him as to whether he had any other securities?

A. Yes, sir; we would have preferred something else besides this, because we didn't consider those as good at all.

Q. What reply did he make?

A. He replied that he had nothing else that he could give us that he knew of that was as satisfactory as that or as good as that.

Cross-examination by Mr. WALKER:

Q. I understand you to say that your recollection of the conversation between you and Mr. Cadman when he first applied for this loan is very indistinct as to the exact conversation that took place; is that so?

A. Well, I didn't mean to say that my recollection was very distinct——

Q. Indistinct.

A. Indistinct. I say that the application was entered upon the application book, and it was a reference to that that enabled me to remember more distinctly in regard to all the transactions.

Q. Do you now undertake to say that you recollect distinctly that what you stated was said?

A. Well, that is my present recollection; yes, sir.

219 Q. Did you not in your examination-in-chief state that it was your impression—you could not swear to it?

A. My impression I think was refreshed by this book, where it was entered.

Question read.

A. My impression of what?

Q. As to the conversation that took place between you and Mr. Cadman is what I refer to; that it was not a distinct recollection; it was an impression merely.

All the cross-examination was then read at the request of the witness.

A. Now what is your question?

Q. It was an impression?

A. I said; I don't know how he has got it down in my direct examination; I had an impression and this reference to the book where the application was made refreshed my recollection, so that I stated then that such were the facts with regard to it, and that refreshed my recollection what I had in my book here in my handwriting.

Q. Are you able to recollect in looking back for a number of years, by refreshing yourself from the books, all the circumstances connected with all the loans you made?

A. I would not be able to swear to them to that extent, but I can swear to this: that my recollection of a transaction or a matter is usually very good. I can give you an illustration of that if you want.

Q. No, sir; I don't ask for any illustration; it would be too long a story. Now, sir; didn't Mr. Cadman tell you at that time that he had an interest in the land that he had conveyed to Mr. Peter, and that he expected to make a good thing out of it?

220 A. My recollection of it is that it is no such thing.

Q. Not any such thing?

A. No, sir.

Q. [Is] Mr. Peter one of the customers of your bank?

A. Yes, sir.

Q. Quite a large one isn't he?

A. No, sir; not a very large one. No, sir; I don't think that up to this time that is mentioned; I don't remember of his having ever made an application to our bank for any loan or any discount of any kind whatever.

Q. But I am asking with reference to his being now a customer of your bank?

A. He is now; yes, sir.

Q. When was your attention first recalled to this conversation?

A. It was recalled by Mr. Cadman stating that he was going to commence a suit against Mr. Peter.

Q. Did he then talk over the matter with you as to this conversation?

A. No, sir; not particularly.

Q. How did that recall your recollection—just what took place on this occasion?

A. He spoke to me about that, and I referred to the book to see what our entries were in regard to it, what the loan was to him, and I was suprised at Mr. Cadman's claim that he had an interest in the land, for the reason that the bank lost pretty largely through the transaction with Mr. Cadman, and I mentioned that matter to Mr. Cadman, and he said that if he recovered from Mr. Peter he expected to make the bank good for all it had lost.

221 Q. Do you mean to say that you lost on these two notes he had discounted?

A. No, sir; we lost in the matter of money that was loaned him.

William A. Butler sworn on behalf of defendant:

Q. Where do you reside?

A. In the city of Detroit.

Q. In what business are you engaged?

A. In the banking business.

Q. Were you so engaged in that business in October, 1875?

A. Yes, sir.

Q. Do you know Charles Cadman and William Peter?

A. Yes, sir.

Q. Do you recollect of Mr. Cadman applying to you to obtain a loan some time in the month of October, 1875?

A. Yes, sir.

Q. Do you remember the amount that he wanted?

A. $10,000.

Q. What security did he want to give you?

A. He wanted to give me two notes against William Peter that were secured by a mortgage.

Q. Mortgage made by whom?

A. William Peter.

Q. Did he then inform you as to who held that mortgage?

A. I think he did. It was held by the Savings Bank.

222 Q. Did you go over to the Savings Bank to ascertain?

A. I have no distinct recollection about that. My impression is that I did, but I have no distinct recollection about that. I got convinced it was right and loaned him the money.

Q. You don't remember of seeing Mr. Walker and inquiring of him whether he held it?

A. No, I don't.

Q. Do you recollect the date?

A. I recollect the time by the note.

Q. What date was that?

(Witness refers to memorandum.)

A. This note was dated October 30th, 1875, on which day I gave Mr. Cadman $10,000.

Q. And took the notes of William Peter secured by that mortgage?

A. Yes, sir.

Q. What talk did you have with him at that time as to how he received the mortgage?

A. It's so long ago that I——

Q. Your impression?

A. I have got an impression—I don't know how I got it—that he sold Peter some land.

Q. This mortgage was taken to secure the purchase-money?

A. I could not say.

Q. What is your best impression—that you got it from him?

A. Well, I have no best impression about it. It is so long ago that I don't remember. I don't remember every word that was said.

223 Q. Who subsequently paid that note?

A. Mr. Peter paid all there was paid on it, but the Cadman note never was paid in full. There was about $80 back on it.

Q. What was that in?

A. In interest. The Cadman notes bore 10 per cent. and the Peter note bore 8, and Mr. Cadman owes me that now. I would like to get it. I expect to get it when he recovers in this suit; I expect to get it without any reference to that.

Cross-examination:

Q. Were these Peter notes paid at maturity?

A. I think one of them was renewed; but they were paid. If Mr. Peter renewed it he renewed it on his own responsibility.

HENRY N. WALKER recalled for further examination:

Q. Were the Cadman notes paid at maturity?

A. No, sir; Mr. Peter's notes were received as collateral. The note of Mr. Cadman was the principal and that was renewed, and it ran along from the time this loan was made, on the 28th of October, until the 6th of May, when the bank not only took the notes of Mr. Peter's and the mortgage absolutely, but also took up—or furnished Mr. Peter the money to take up—the notes held by Butler, which he deposited with us, so that the Savings Bank then held the entire $20,000. Whether that was renewed or whether it was continued without renewal, on a specific understanding as to the date, I could not say.

Mr. PETER: Has been renewed several times.

The WITNESS: Well, as it was renewed he took it up and it was
paid. The Cadman note, that was the principal debt, was
224 renewed once or twice—once—dated on the 6th of May.
From this same book, where everything was entered in regard
to such transactions, there was an application from Mr. Peter that
we should take the whole paper ourselves and trust him.

Q. Which you did?

A. Which we did.

Redirect examination.

Q. When you say renewed, did Cadman renew it? He didn't pay any attention to it, did he?

A. No; I think Mr. Cadman had gone away before that; I think all the negotiations for them were with Mr. Peter.

WM. PETER recalled for further examination-in-chief:

Q. You heard the testimony to-day of Mr. Cadman about going to his house to dinner on the 25th of October, 1875?

A. Yes, sir; heard it.

Q. Do you know whether you did go to his house to dinner or not?

A. No, sir.

Q. Did you ever take dinner at his house?

A. I never ate a mouthful at Mr. Cadman's house. On that day

I paid for my dinner at the Exchange, which I can tell by the register.

Q. At what time did you arrive here that day?

A. I left at 11 o'clock by the Lake Shore road, according to my best recollection, getting here at half past one.

Q. That was on Monday, the 25th, was it?

A. Yes, sir.

225 Q. Mr. Walker yesterday, when you were attempting to tell something, stopped you; you were speaking about sending a man, some time in the fore part of October, up to make an estimate. You can state now what you were then proceeding to state.

Objected to as incompetent. It is a mistake that I stopped him. I had asked him no question on that.

A. When Mr. Cadman told me what I could have the land for, $20,000, I then sent my man up to see if I could take the land at that price.

Q. About what time was it he told you you could have it for $20,000?

A. From the 8th to the 10th of October.

Q. About what time did your man return?

A. Two or three days before I came here. They got back the 21st, 22d, or the 23d, somewhere there.

Q. When you came here how long were you making the bargain with Mr. Cadman?

A. Why, all I had to say was yes or no. The price was $20,000; I could either take it or let it alone.

Q. You accepted it?

A. I accepted that proposition.

Q. And the most of the time that you spent was as to the terms of payment?

A. Yes, sir.

Cross-examination by Mr. WALKER:

Q. Who did you send up there?

A. A man by the name of Lee.

Q. One man?

A. One man I sent and he hired two more.

226 Q. Where is he?

A. I don't know where he is now. I have never heard from him since 1876. I think he went to Washington Territory. I could not keep him any longer. He worked for me some time, and times were hard, as you told me yesterday. I was embarrased and could not find him work and he went away.

Q. Didn't Mr. Cadman tell you at that time that, through Mr. Steele, he had been offered $30,000 cash for this land in Buffalo?

A. Perhaps he has, Mr. Walker; perhaps he has; I would not say that he had not; it is possible, I think; I would not say, but it would be natural for me to say, why didn't you take it if he did?

Q. You think he might?

A. It is possible that he did?

Q. Don't you recollect that he did?

A. There was something said of an offer, but they could not get the money. I think that Mr. Cadman said that he had an offer, but the man could not get the money—could not raise the money.

Q. You think he said that?

A. I think so.

Q. When did he say that?

A. At the time when he told me I could have the land for $20,000, because he had to close it out; he was obliged to have means.

Q. Don't you think that the register at the Exchange shows your name was entered as for dinner, and then the dinner is crossed out, so that you only paid for your supper and lodging there?

A. I didn't stay there over night, I guess.

227 Q. Didn't you have a room there?

A. No, I think not.

Q. Didn't you have room 75, and didn't you stay over night, and was not the letter D on the register to show that you were there before dinner, and the letter D was marked out and you didn't pay for that?

A. I don't know as I did, sir.

Q. Didn't you look at the register yesterday?

A. Yes, sir.

Q. Didn't you notice that?

A. No, sir; I didn't notice it. I say to you positive that I never ate a mouthful in any house in this city except the Exchange and the Russell house—positive I never ate a mouthful. If it was not vulgar I would say what I have done here. If it don't go down I will say——

Mr. GEER: No, answer the question.

A certified copy of the deed from Milton D. Ward to Charles C. Cadman is offered in evidence by plaintiff's counsel, and is marked "Exhibit G."

HERMAN BOLDT, sworn on behalf of complainant.

Examined by Mr. WALKER:

Q. Are you the clerk of the Michigan Exchange?

A. Yes, sir.

Q. What is the book that now lies before you?

A. It is what I should call a public register, open to everybody.

Q. Of what?

A. Of the Michigan Exchange hotel.

Q. Where is this kept?

A. Kept on the counter.

Q. Where are the old books kept?

228 A. After the books are filled they are locked up in the store-room.

Q. And this is taken from that store-room?

A. Yes, sir.

Q. Look at the entry under date of Monday, October 25th, 1875, of the name of William Peters, Toledo. State what the letters "D" and "T" indicate.

A. "D" stands for dinner and "T" for supper. We put down "D" whenever a man comes in without asking him whether he will have dinner or not. Sometimes dinner is on, and he may come in while dinner is coming on, but after dinner he might say he didn't feel like eating dinner, or he might take a lunch somewhere and it is changed.

Q. But it indicates at the time it is entered that you suppose he is going to be there at dinner?

A. Yes, sir.

Q. What does the erasure indicate marked through it?

A. O, that is just to cancel the "D." (Referring to the mark through the letter "D" on the register.)

Q. What does the "T" indicate?

A. That he is going to take supper.

Q. What does the figure 75 against his name indicate?

A. That is the number of his room he is going to occupy.

Q. I suppose you are not acquainted with Mr. Peter's handwriting?

A. No, sir.

It is admitted that the name referred to—William Peter—is in the handwriting of the defendant.

229 Cross-examination by Mr. GEER:

Q. You know nothing about the entry yourself?

A. No, sir.

Q. You know nothing of who placed it there of your own knowledge?

A. No, sir.

Q. Were not you the clerk there in 1875?

A. No, sir.

Q. When did you go there first?

A. Last December.

Q. Prior to that you don't know what the practice of their clerks had been?

A. No, sir.

Q. You know nothing about when the marks were made there?

A. No, sir.

Redirect by Mr. WALKER:

Q. Will you state after his name and the "D" thereon there are several "D's" following him?

A. Yes, sir.

Q. How many?

A. There are three there that I see.

Q. And the dinner-hour is one o'clock?

A. From one to three.

Q. So that if a man should come in any time between those two hours he would be put down for dinner?

A. Yes, sir.

230 Q. Do you know what time that morning train usually arrives?

A. About half-past one. If a man comes in in the evening I should suppose that he was going to bed, and I would put down the letter "L," but if he says I have been sleeping on the cars, I should draw a stroke over the letter and put down "B," for breakfast.

Recross-examination:

Q. Do you know what time the train arrived from Toledo at the time this registration was made?

A. No, sir; the train that leaves there now at 11 arrives at half-past one.

CHARLES C. CADMAN recalled in his own behalf.

By Mr. WALKER:

Q. Look at the pencil writing signed "C." at the bottom of "Exhibit A 2," and see in whose handwriting that is.

A. That is my handwriting, sir.

Q. Where was it written?

A. I don't know—about the date of the letter; shortly after the date of the letter.

Q. Of what letter?

A. This letter, "Exhibit A 2."

Q. When, until produced upon this trial, did you see this paper?

A. In 1875.

Q. What day?

A. October 15th or 16th.

Q. The 25th was the date?

A. Possibly; I don't remember the date I saw it last. I remember seeing it.

231 Q. Have you had it in your possession since you gave the deed to Mr. Peter, produced in court?

A. I have not.

Cross examination:

Q. You made that memorandum there at the bottom for the benefit of Mr. Alfred Russell, did you not?

A. No, sir.

Q. For whose benefit did you make it?

A. To show to Mr. Peter.

Q. Look at the date of it; didn't you see it was to Russell?

A. Yes, sir.

Q. Why did you give it to Mr. Peter?

A. It was turned over with the estimates, as I recollect. That paper went to Boston and back again, along with Mr. Rankin's original estimates.

Testimony taken before Herschel Whitaker, a notary public, at his office in the city of Detroit, January 10th, 1882, at two o'clock p. m.

Appearances: Mr. Charles Burton, for complainant; Mr. Harrison Geer, for the defendant.

HENRY RUSSELL, a witness produced and sworn on behalf of the complainant, testified as follows:

Examined by Mr. BURTON:

Q. What is your name?

A. My name is Henry Russell; my business is attorney-at-law; my residence is Detroit, Michigan.

Q. Where were you in the latter part of 1875?

A. I was a student at law at that time in the office of Mr. Albert Russell.

Q. Do you know Mr. Cadman?

A. I do—yes, sir.

Q. Did you know him at that time?

A. Yes, sir.

Q. Do you know Mr. Peter?

A. I don't remember Mr. Peter. Since then I have met him at Columbiaville, Michigan.

233 Q. Will you look at this paper marked "Exhibit 4" and state whether that is your handwriting?

A. Yes, sir; the whole paper is in my handwriting.

Q. State whether that signature is yours to the acknowledgement.

A. Yes, sir.

Q. And your name is signed to it as a witness?

A. Yes, sir.

Q. Can you tell at what hour of the day you took that acknowledgement?

A. I cannot recollect the fact of drawing the deed, except that I remember Mr. Cadman, Mr. Russell, and Mr. Peter during the day were about the office, and at noon I went to dinner with Mr. Russell, and that after dinner I went next door, and I met Mrs. Cadman then for the first time in my life, and took the acknowledgement.

Q. About what time did you return to the office?

A. I came back there for the afternoon, I suppose, at half-past two or three o'clock—somewhere about that time I came back.

Q. That was the first time you had ever met Mrs. Cadman?

A. Yes, sir; to remember her.

Q. Do you know whether you had ever been in Mr. Cadman's house before that?

A. I don't remember of ever having been there before.

Q. Or since?

234 A. O, yes, I have been there since; not while Mr. Cadman lived there. I had never been in Mr. Cadman's house but

that once in my lfe, I think, and was not there again to my recollection.

Q. Do you know at what hour Mr. Russell took his dinner that day?

A. At noon. I don't know exactly what the hour was, except it was the noon hour.

Q. Between twelve and two?

A. Yes, sir.

CHARLES C. CADMAN recalled for further cross-examination.

By Mr. GEER:

Q. I suppose the only business deal you had with Mr. Peter was the making of these two $5,000 notes, and the renewals thereof, and this land transaction—am I right in that?

A. Individually, yes sir, as far as I remember.

Q. And when you refer to certain notes that have been cancelled and returned, you referred to the two original $5,000 notes and the renewals thereof, as they came along—you remember in the letters to Mr. Peter you speak of certain notes returned to him?

A. Yes, sir; I believe it refers to that.

CHARLES C. CADMAN *vs.* WILLIAM PETER.

235 Testimony taken at the office of Herschel Whitaker, a U. S. commissioner, in the city of Detroit, on the 6th day of March, 1882, at 2.30 p. m.

At this hearing Mr. Charles Burton and Mr. C. I. Walker appeared for the complainant and Mr. Harrison Geer for the defendant.

FREDERICK W. HAYES, a witness produced on behalf of complainant, after being duly sworn, testifies as follows:

Examined by Mr. GEER:

Q. Where do you reside?

A. Detroit.

Q. What is your business?

A. Cashier of the Merchants' and Manufacturers' National Bank.

Q. How long have you been acting as such cashier?

A. Since the 1st of February, 1876.

Q. Who was cashier of that bank in 1875?

A. C. C. Cadman.

Q. Was that the complainant here?

A. Charles C. Cadman; yes.

Q. Will you turn to the account of Milton D. Ward in the ledger for 1875. (Witnesss refers to a book.) I would like to know on July 17, 1875, what the state of Mr. Ward's account with the bank was?

Objected to as irrelevant and incompetent.

A. Do you mean at the close of business or in the morning?

Q. In the morning.

A. The book shows a credit balance of $19.39.

236 Q. In his favor?

A. In his favor—a credit balance.

Q. Will you state whether on the same day there was another sum placed to his credit?

A. That is on July 17th?

Q. Yes.

A. Yes, sir; deposited $3,810.50.

Q. Will you state by whom that was made?

A. I could not do that.

The same objection is entered to all this testimony.

Q. State whether it was made by Mr. Cadman, and then I will call your attention as to what it was made up of.

A. I will have to refer to the other papers so as to say. It is in the handwriting of Mr. Cadman.

Q. State whether it was money or what it was.

A. Judging from the check mark on it I should judge it was checks.

Q. State what they were.

A. There is one item of $2,800 and another of $1,010.50.

Q. Whose checks are they?

A. That I could not tell without looking through the books to see what checks are charged up on that day.

Q. That is what I want get at. See if they were not made up of checks of L. W. Tinker.

Witness refers to another book.

237 A. I find in L. W. Tinker's account, on the 17th of July, three checks, and among them one of $2,800 and one of $1,010.50.

Q. That agrees with the memoranda that appears in Mr. Cadman's handwriting?

A. The same amount; yes, sir; $2,800 and $1,010.50.

Q. Will you look at the account of Milton D. Ward, and see if on that day Milton D. Ward received any draft for any amount, and if so, what amount?

Witness produces another book.

A. I do not find any on the 17th of July.

Q. What does it appear in your ledger?

A. What is the amount of it?

Q. Yes.

A. $500. On the 20th there is a charge of $500.50. I find on the 20th of July a record of a draft drawn on New York to the order of M. D. Ward for $500.

Q. Then that was sent to him on the 20th and not on the 17th?

A. It was drawn on the 20th.

Q. State whether that was charged up to his account.

A. Yes, sir; $500.50 was charged to his account that day.

Q. Will you look in the month of September at the account of Milton D. Ward, and see whether any money was paid to him on the 18th of September, 1875?

A. Do you mean deposited to his credit?

Q. Yes.

238 A. I do not find that he had any credit on the 18th of September.

Q. See if it appears anywhere on your books that the draft drawn was drawn on A. G. Spencer of $1,800.

A. I do not understand.

Q. You will find it on Oct. 19, 1875.

A. This book don't give any names; this is the cash book.

Q. You have papers somewhere showing that?

A. We have papers explaining these entries. What I want to get at is, whether that money was charged or credited to Mr. Milton D. Ward.

Q. It would probably be charged to him; it was a draft drawn by him. A draft on A. G. Spencer by Ward, that was paid by Cadman on Oct. 29, is what I want to show.

A. If it is an advancement I should have to refer to another book. After an examination the witness says, I do not see any such discount as $1,800.

Q. It was in September; it was not paid.

A. There is none that I could see. It may have been a sight draft, or something of that kind. I do not see any such debit or credit.

Q. Who was it drawn on, somebody in Chicago?

A. Muskegon. I do not see any in this account; it must have been a sight draft. Yes, I find that a draft was drawn by Milton D. Ward on A. G. Spencer, of Big Rapids, of $1,800, and it was returned unpaid and credited on the 29th of October.

239 Q. Was the draft paid—that was the date it was paid; was it not?

A. Yes, sir.

Q. Credited to whom?

A. To the bank it was charged to and when we sent it out.

Q. The draft was paid on Oct. 29, 1875?

A. It was taken up on Oct. 29, 1875; the date of the draft is Sept. 1.

Q. Are you able to state by whom it was paid to the bank?

A. I have no recollection.

Q. Will you look and see if you have any record of a draft drawn by Milton D. Ward on R. K. Bickford & Co., of Chicago?

A. I did have one draft for $3,000.00 drawn by Milton D. Ward on R. K. Bickford.

Q. Give me the date of the draft.

A. The draft was on the 14th day of September, payable 60 days after date, due on the 16th of Nov., for $3,000.00.

Q. State when it was paid. Does your book show it was returned? Mr. Cadman says it was returned?

A. I cannot find it returned at all.

Q. Ought that not to be charged to Ward when it was paid?

A. No, not if it was paid by Bickford.

Q. Do you find it there?

240 A. It appears that it was never sent to Chicago; that it was paid here on the date it was due.

Q. Then go on and state on what date that draft on R. K. Bickford was paid.

A. I should say on the 16th day of Nov., 1875.

Q. Where paid?

A. Paid here.

Q. Here at the bank.?

A. Yes, sir.

Q. Can you state by whom?

A. I could not state by whom.

Q. There is nothing to indicate that it was paid by anybody except the party by whom it was drawn; is there?

A. No.

Objected to as leading and improper.

Q. Do you find a note there held by the bank which F. W. Noble had endorsed?

A. I find one due on the 18th of Oct. $1,000.00.

Q. Who made the note?

A. Milton D. Ward.

Q. Endorsed by F. W. Noble?

A: Yes, sir.

Q. How much?

A. $1,000.00.

Q. What was the date of the note?

A. Aug. 16, 1875.

241 Q. When was it due?

A. Due sixty days after date, on the 18th of October.

Q. State when it was paid to the bank.

A. On the 29th of October, 1875.

Q. Can you state by whom it was paid?

A. I could look through the books to see if I can find any check of that amount. I have no recollection of it.

Q. I should presume you could not find it. Can you say by whom it was paid?

A. No.

Q. What was the amount that was paid to the bank on the note?

A. There would only be $1,000 paid to the bank by Mr. Ward.

Q Will you state whether Mr. Ward had a credit at the Merchants' and Manufacturers' Bank on the 19th of October or not of $4,634?

A. I find such a credit on the 19th of October, 1875—$4,634.84.

Q. Can you state the sources from which that money was derived?

A. I find a deposit ticket in Mr. Cadman's handwriting for $4,634.84, in one item, apparently a check. I state the whole thing so as to save time and questioning.

Q. Do you find, at any time, that Mr. Russell made a draft on Mr. Peters?

242 A. I find the record of a draft drawn by Alfred Russell on William Peters, dated the 19th day of October, payable in five days, for $10,000.

Q. State whether that appears to have been discounted there at your bank or not.

A. It certainly advanced the money on it in our cash—time items.

Q. Can you tell me where the balance of that $10,000 went?

A. Perhaps I might by looking through the tickets.

Q. Will you look there and see if there were not $4,500 paid on M. D. Ward's note, endorsed by L. W. Tinker, due September 15?

A. We had a note of Mr. Ward's, due on September 15, 1875, which was paid on the 19th of October.

Q. What is the amount?

A. $4,500.

Q. Will you see what the interest was upon it?

A. I should presume we got ten per cent. in those days. I find a credit here to exchange of $42.50, on the 19th of October, from M. D. Ward.

Q. I want to show how much that note with the interest amounts to.

Mr. Walker: The foregoing testimony is all objected to.

Q. What is the amount of the note made by M. D. Ward, endorsed by L. W. Tinker? What was the amount of the note and interest at the time it was paid?

A. $4,542.50.

Q. And the amount that was credited to Ward's account was how much?

243 A. $4,634.84.

Q. How much do the two together amount to?

A. $9,177.34.

Q. Will you state how much the discount on the $10,000.00 was?

A. $25.00.

Q. Is that what it was charged up at?

A. Yes, sir; making $9,975.00 to his credit.

Q. When this $10,000 was discounted, to whose credit was it placed?

A. Mr. Alfred Russell's.

Q. Was there any memorandum or any checks transferring that over to Ward, and also for the purpose of paying this note and the interest upon it?

A. I find on the 19th of October he gave two checks, and the two amounted together to $9,177.34.

Q. Does it agree with the amount of the Ward notes, endorsed by Tinker, including the amount placed to Ward's credit on that bill?

A. The amount placed to his credit on the 19th of October was $4,634.84. The amount paid on Ward's note was $4,542.50, making $9,177.34.

Q. Will you state, during the year 1875, whether you had any knowledge that Charles C. Cadman kept his accounts upon the books of your bank in the name of Alfred Russell?

A. I had no knowledge of that.

244 Q. Have you examined your books for the purpose of ascertaining as to whether there has been any money placed to the credit of Alfred Russell by the directions of Charles C. Cadman?

A. I have not made any examination for that purpose.

Q Will you now examine them and see if Charles C. Cadman in the year 1875 had any sums of money placed in the account of Alfred Russell upon the books of your bank?

A. I could not undertake to examine the account for that purpose without a sufficient length of time given. I would have to refer to every item of the account.

Q. I don't want to go back so far.

A. I would have to go and look at every item.

Q. I shall want you to do it and see what items in the account of Alfred Russell were placed there by the directions of Charles C. Cadman. I do not care to go back further then the month of July.

A. I find a deposit ticket of $10,000 made out in Mr. Cadman's hand on the 29th of October, 1875.

Q. That is, Mr. Russell had a credit of $10,000?

A. Yes, sir.

Q. Was that to pay the other $10,000, less the discount?

A. I could not say as to that.

Q. Have you not the means of ascertaining as to whether the draft that was drawn by Alfred Russell on William Peter was paid or not?

A. I think I can tell.

Q. Look at it?

245 A. According to the record here it shows that the $10,000 draft drawn by Mr. Russel was returned unpaid and taken up here on the 30th of October.

Q. Returned unpaid and it was subsequently paid here at the bank?

A. Taken up. I don't know anything about who it was taken up by; I know it appears the bank had the money on it.

Q. On what day was the bank paid?

A. On the 30th of October.

Q. How was the $10,000 on the 29th of October paid?

A. I could not swear absolutely that it was paid by that draft because there is no connection between the two, except in amount.

Q. What would be your best impression as how the $10,000 was paid?

A. Judging from the record I should think that that $10,000 draft was for that purpose, but I could not say.

Q. You find that on the 29th of Oct. your bank received a draft of $10,000, given by the Detroit Savings Bank on the American Exchange National Bank of New York?

A. Yes, sir.

Q. Were you an officer or in anywise connected with the bank in 1875?

A. I was assistant cashier of the bank.

Q. And how long had you been acting in that capacity previous?

A. From June, 1873, I think.

246 Q. You have been cashier the balance of the time?

A. I have been acting cashier or cashier since Feb., 1876.

The examination was then adjourned until March 7th, at 9 a. m.

MARCH 9, 1882—nine o'clock a. m.

Examination of FREDERICK W. HAYES continued.

Examined by Mr. GEER:

Q. Have you examined the account of Alfred Russell, commencing in July and extending up to as far as the 30th of October, for the purpose of ascertaining the sources from which his credits were obtained?

A. I have examined all the account, the deposit tickets, and discounts.

Q. Will you state whether any of those, prior to the 19th of October, appear to be received from sources in which Charles C. Cadman was in any way interested?

A. So far as I should judge I should say not.

Q. Then the first one you find there is the one on the 19th of October, where the draft drawn on William Peter by Alfred Russell was discounted?

A. Yes, sir; that is the first one I find.

Q. Do you find at a later date, and if so give the date, Alfred Russell credited with $10,000?

A. I find on the 29th of October he had a credit of $10,000.

Q. Will you state what that was?

A. I could not state what it consisted of.

Q. Whether or not it was a draft of the Savings Bank?

247 A. I could not say positively that it was that draft.

Q. But do you find a draft there upon your books of that date and that amount?

A. I find a draft on New York for $10,000.

Q. Give me a description of the draft, on whom it was drawn and the number, and then I will fix it in another shape.

A. A draft of the Detroit Savings Bank on the American Exchange National Bank of New York, No. 32,170.

Q. Do you find on that same date, or on the next day, on the 30th of October, a draft appearing upon your books for $10,000?

A. Yes, sir; I found another draft of $10,000—a draft drawn by the Mechanics' Bank of Detroit, No. 17,835, on the Mechanics' National of New York.

Q. So far as your books appear does anybody have any credit for that $10,000?

A. I did not look for that.

Q. I wish you would look and see.

Witness produces a book.

A. I do not find there was any credit to any other person on the 30th of October, for an amount equal to $10,000, to any individual.

CHARLES C. CADMAN recalled for further cross-examination.

Examined by Mr. GEER:

Q. Will you state whether the draft drawn by the Detroit
248 Savings Bank, No. 32,170, on the American Exchange
National Bank of New York, for $10,000, dated October 29, 1875, was the credit which Alfred Russell has upon the books of the bank as of that date?

A. I believe it was.

Q. And is that a draft that you got from the Detroit Savings Bank at the time you had the note of $10,000 of William Peter's discounted there?

A. Yes, sir.

Q. It was a draft made by the Mechanics' Bank of Detroit, numbered 17,835, on the Mechanics' National Bank of New York, of $10,000, which appears upon the books of the Merchants' and Manufacturers' Bank of the date of October 30, 1875, a draft you got from Butler, where you discounted two of Peter's notes of $5,000 each?

A. I think it was, and——

Q. And those were the notes that were given as a part of the consideration for this land?

A. They are the notes that he advanced me.

Q. That pertained to the land transaction?

A. They pertained to that transaction.

WILLIAM PETER, defendant, recalled in his own behalf.

Examined by Mr. GEER:

Q. Will you state whether you had any business transactions with Charles C. Cadman, personally, prior to the 25th day of Oct., except wherein you loaned him your two notes of $5,000 each?

A. No, sir.

249 Q. You have heard read the letters that have been offered
here in evidence here on the part of the defendant, have you?

A. Yes, sir.

Q. Will you say what they refer to when they speak of the renewals?

A. The notes I loaned him.

Q. Had either of those notes been paid on the 25th of Oct., 1875, at the time when you claimed to have purchased these lands?

A. No, sir.

Q. Were they subsequently renewed by you or did you send him notes; whether you subsequently sent him your notes to take up those?

A. I sent him some notes after that.

Q. Were they for the purpose of taking these up?

A. Yes, sir.

Q. It was for no other consideration only to take up those two $5,000 notes?

A. No, sir; there was a draft made on me for $5,000 to pay one of those notes.

Q. Then that draft pertained to the payment of one of those notes?

A. Yes, sir.

Q. At the time he withdrew from the bank do you know whether he held one of those notes that he had not disposed of or used?

A. Yes, sir.

Q. State whether that was returned.

A. The one he had not used was returned; the other became due in March or April.

250 Q. Then you paid one of those notes, and the draft of $5,000 was drawn on you?

A. Yes, sir.

Q. Will you state whether on the 19th of October, 1875, you were indebted in any way to Mr. Alfred Russell?

A. No, sir.

Q. Did you have any funds belonging to him in your hands?

A. No, sir; I never did.

Q. Were you in any wise indebted to Charles Cadman, or did you have any funds in your hands belonging to him?

A. No, sir; I never had.

Q. Did you authorize either Mr. Cadman or Mr. Russell to draw any draft on you on the 19th of Oct.?

A. No, sir; I never did.

Q. Did you have any knowledge that either Mr. Russell or Mr. Cadman were going to make a draft on you?

A. No, sir.

Q. Did you accept the $10,000 draft drawn by Mr. Russell on you on the 19th of October, 1875?

A. No, sir.

Q. Did you after refusing to accept the draft receive it and return it to Charles C. Cadman?

A. Yes, sir; I did not pay it, but I received it and returned it to Mr. Cadman. I received it for Mr. Cadman's accommodation.

251 Q. And returned it to him?

A. Yes, sir.

Q. With that letter? (Handing paper to witness.)

A. With this letter. Yes, sir.

Q. Have you got a copy of the letter you sent him at that time?

A. Yes, sir; I have. It reads:

"TOLEDO, *Nov.* 1, 1875.

"Mr. Charles C. Cadman.

"DEAR SIR: Enclosed find draft protested; I think well protested, too.

"Yours respectfully, WILLIAM PETER."

Q. State whether that letter was sent to him.

A. Yes, sir.

Letter offered in evidence and marked "Exhibit X."

WITNESS: This was the $10,000 draft drawn by Mr. Russell on me.

Cross-examination by Mr. **Burton**:

Q. Do you remember the contents of that draft?

A. No, sir.

Q. It was drawn by Mr. Russell on you, and to whom was it charged, or to be charged?

A. I don't know.

Q. Was Mr. Cadman's name on that draft?

A. I could not say.

Q. How did you come to return it to Mr. Cadman if it was drawn by Mr. Russell?

252 A. By a letter in which Mr. Cadman requested me to do so. Mr. Cadman instructed the cashier to return it to me.

Mr. **Geer**: You may state anything you desire from that paper you hold in your hand.

A. The draft was protested for non-acceptance, non-payment, and delivered to William Peter, November 1, by order of C. C. Cadman, cashier, protest fee charged to Merchants' and Manufacturers' Bank.

Mr **Burton**: Is this paper you have here the identical memorandum you got or is it a copy of it?

A. This is Mr. Doolittle's handwriting.

Q. This is a copy made lately?

A. Mr. Doolittle gave me this. He took it off his books. He is the cashier of the bank there.

Q. And that is all the reason you had for returning it to Mr. Cadman?

A. Yes, sir; that is all.

Q. That draft was drawn, you say, through the Merchants' and Manufacturers' Bank here?

A. I could not say.

Q. Of which Mr. Cadman was cashier?

A. I suppose so; I should think so; yes, sir.

Q. This was how long after you had been here to Detroit?

A. How do you mean?

Q. How many days after you were here at Detroit?

A. I could not say as to that.

Q. How many days after the deed of the land was drawn?

253 Mr. **Geer**: It was six days before.

A. O, well, it was returned Nov. 1. The draft was made Oct. 10, at five days' sight. The draft was made 6 days before he deeded me, I guess; it was made on the 19th and the deed was made on the 25th.

Q. When did you get possession of it—of the draft?

A. Nov. 1.

Q. And you got possession of it after the deed was drawn?

A. Yes, sir.

Q. When was it first presented to you?

A. I could not say; I got it November 1.

Q. That is when you got it; but when was it first presented to you and demand for payment made?

A. I could not say as to that. Of course the draft was made here and sent over there and sent for acceptance to me, I suppose, and it was refused. I could not say what day.

Q. Probably sent to you immediately?

A. It must have been.

Q. Did you see this draft before you came here on October 25, when the deed was made to you?

A. I don't know that I saw the draft, but I refused to accept it.

Q. That is not the question. Had you seen it before you came here and took the deed?

A. I think not. I think the notice came that the draft was to be accepted. I think I sent my book-keeper down, and said I would not accept it. I could not say what day it was.

254 Mr. Burton: I offer in evidence the paper produced by the witness, Peter, marked "Exhibit A A."

Q. This "Exhibit A A" is a statement furnished you by whom?

A. The cashier of the Merchants' National Bank of Toledo.

Q. It was stated by him to be a correct copy of his entire minutes of the transaction?

A. He did not say so.

Q. What did he say?

A. I asked him about it and he gave me that. He said the draft was delivered to me, and I looked it up and I found I sent it to Mr. Cadman. There is the letter it was enclosed in. (Referring to "Exhibit X.")

Q. Is this interlineation in "A A," November 1, 1875, in the handwriting of Mr. Doolittle?

A. I think so. I think Mr. Doolittle gave it to me. I did not see him write it, but he handed me this. I should think it was Mr. Doolittle's handwriting. I could not say.

Q. It was in that shape when you go it?

A. I got it from Doolittle's hands.

Q. That interlineation of November 1, 1875, was in there at the time?

A. Yes, sir; I took it just as it is.

The examination was then adjourned.

255 *Complainant's Exhibits.*

Exhibit A 2.

Detroit, *October* 2, 1875.

Mr. Alfred Russell.

Dear Sir: I consider the lands of Milton D. Ward, now owned by C. C. Cadman, in town. fifteen north, of range twelve west, and town. sixteen north, of range twelve west, worth now, to hold as an investment, one dollar and fifty cents per thousand feet standing. Mr. Rankin, the party who estimated the lands, I have employed a number of times, and have bought lands by his estimate; consider him every way reliable, and have found him more liable to underestimate than otherwise. Owing to the location of the lands, situ ated as they are, both on railroad and good river, I consider them very desirable and rapidly advanced in value. Muskegon, Big Rapids, Ludington, all have mills which must be stocked, and as pine timber is being cut off by the millions of feet each year, the supply is rapidly exhausting, and it cannot be otherwise than a very speedy advance in standing timber. I think there are 3,600 acres in the tract, estimated to have 32,800,000 feet, which at one dollar and fifty cents per thousand would make the lands worth ($49,200) forty-nine thousand two hundred dollars, or in round numbers ($50,000) fifty thousand dollars.

Yours respectfully, A. M. STEELE.

We think the lands worth as much as represented by Mr. Steele. October 6th, 1875.

GEO. S. FROST & CO.

256 (In pencil:) 2,000 acres partly cut over makes 5,600 acres, which with the 32,800 feet, Ward says, will make 40,000,000 feet of lumber on the whole tract. C.

Exhibit G 2.

This indenture, made this 10th day of July, in the year of our Lord one thousand eight hundred and seventy-five, between Milton D. Ward, of Detroit, Michigan, of the first part, and Charles C. Cadman, of the same place, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of twenty thousand dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, release, alien, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all those certain pieces or parcels of land situate and being in the county of Newaygo and State of Michigan, and described as follows, to wit: In township fifteen (15) north, range twelve (12) west—in section two (2), the northwest quarter and south half of the south half; entire section three (3); in section four (4), the southeast quarter and north half; in section five (5), the south half; in section six (6), the south half; in section eight (8), the north half of the north half, the southwest quarter of the northwest quarter, and the south half; in section nine (9), the north half; in section ten (10), the north half of the northeast quarter, the northeast quarter of the northwest quarter, and the southwest quarter of the northwest quarter; in section twelve (12), the entire section; in township sixteen (16) north, range (12)
257 west—in section eight (8), the west half of the southeast quarter; in section nine (9); the southwest quarter; in section twenty-one (21), the northeast quarter; in section twenty-two (22), the west half; entire section thirty-three (33); in section thirty-four (34), the south half; together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder or

remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, and demand whatsoever of the said party of the first part, either in law or in equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises as above described, with the appurtenances, unto the said party of the second part, and to his heirs and assigns, forever; and the said party of the first part, for himself, his heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above described as of a good, perfect, sure, absolute, and indefeasible state of inheritance, in the law, in fee-simple; and that the said lands are free from all encumbrances whatsoever; and that the above-bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, he will forever warrant and defend.

258 In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

MILTON D. WARD. [SEAL.]

Signed, sealed, and delivered in presence of—
W. H. TRAINOR.
JAMES A TRAINOR.

STATE OF MICHIGAN, } *ss:*
County of Wayne,

On this tenth day of July, in the year one thousand eight hundred and seventy-five, before me, a notary public in and for said county, personally appeared Milton D. Ward, to me known to be the same person described in and who executed the within instrument, who acknowledged the same to be his free act and deed.

W. H. TRAINOR,
Notary Public, Wayne County, Mich.

STATE OF MICHIGAN, } *ss:*
County of Newaygo.

REGISTER'S OFFICE.

I, W. R. Taylor, register of deeds for said county, do hereby certify that I have compared the within and foregoing copy of warranty deed with the original on record in this office, and find it a correct transcript therefrom and the whole of such original record.

Given under my hand and official seal at Newaygo this 4th day of March, 1881.

[L. S.]

W. R. TAYLOR,
Register of Deeds.

EXHIBIT 12.

Know all men by these presents that I, William Peter, of Bay City, Michigan, do hereby appoint C. C. Cadman to be my substitute

and proxy for me and in my behalf, to vote at any election of
259 the Merchants' and Manufacturers' Bank, of Detroit, and at
any meeting of the stockholders of said bank, as fully as I might or could were I personally present.

In witness whereof I have hereunto set my hand and seal this 25th day of May, 1871.

WILLIAM PETER.

Witness:

—— ——.

Defendant's Exhibits.

EXHIBIT 4.

This indenture, made this twenty-fifth day of October, in the year of our Lord one thousand eight hundred and seventy-five, between Charles C. Cadman and Harriet A. Cadman, his wife, of Detroit, Michigan, of the first part, and William Peter, of Toledo, Ohio, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of twenty thousand dollars ($20,000) to them in hand paid by the said party, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, release, alien, and confirm, unto the said party of the second part, and to his heirs and assigns forever, all those certain pieces or parcels of land situate and being in the county of Newaygo and State of Michigan, and described as follows, to wit: In township fifteen (15) north, range twelve (12) west—in section two (2), the northwest quarter and the south half of the south half; entire section three (3); in section (4), the southeast quarter and north half; in section five (5), the south half; in section (6), the south half; in section eight (8), the north half of the north half, the
southwest quarter of the northwest quarter, and the south
260 half; in section nine (9), the north half; in section ten (10),
the north half of the northeast quarter, the northeast (n. e.) quarter of the northwest quarter, and the southwest quarter of the northwest quarter; in section twelve (12), the entire section.

In township sixteen (16) north, range twelve (12) west—in section eight (8), the west half of the southeast quarter; in section nine (9), the southwest quarter; in section twenty-one (21), the northeast quarter; in section twenty-two (22), the west half; entire section thirty-three (33); in section thirty-four (34), the south half; together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, and demand whatsoever of the said parties of the first part, either in law or equity, of, in, and to the above-bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises as above described, with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever; and the said parties of the first part, for their heirs, executors, and administrators, do covenant, grant, bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents they are well seized of the premises above described, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law in fee-simple; and that the said lands are free from all incumbrances whatever; and that the above-bargained premises in the quiet and peaceable possession ot the said 261 party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof, will forever warrant and defend.

In witness whereof the said parties of the first part have hereunto set their hand and seals the day and year first above written.

CHARLES C. CADMAN. [L. S.]
HARRIET A. CADMAN. [L. S.]

Signed, sealed, and delivered in presence of—
J. H. HAHN.
HENRY RUSSELL.

STATE OF MICHIGAN, } ss:
County of Wayne, }

On this 25th day of October, in the year one thousand eight hundred and seventy-five, before me, a notary public in and for said county, personally appeared Charles C. Cadman and Harriet A. Cadman, to me known to be the same persons described in and who executed the within instrument, who severally acknowledged the same to be their free act and deed.

HENRY RUSSELL,
Notary Public, Wayne County, Mich.

REGISTER'S OFFICE, } ss:
Newaygo County, }

Received for record this 18th day of October, A. D. 1875, at ten o'clock a. m., and recorded in liber fourteen of deeds, on page 495.

W. PERSONS, *Register.*

EXHIBIT 6.

This indenture, made this twenty-fifth day of October, in the year of our Lord one thousand eight hundred and seventy-five, between William Peter, of Toledo, Ohio, party of the first part, 262 and Charles C. Cadman, of Detroit, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of twenty thousand dollars ($20,000), to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, remised, released, enfeoffed, and confirmed, and by these presents do grant, bargain, sell, remise, release, enfeoff, and confirm, unto the said party of the second part and to his heirs and assigns forever, all those certain pieces or parcels of land situate and being in the county of

Newaygo and State of Michigan, and described as follows, to wit: In township fifteen (15) north, of range twelve (12) west—in section two (2), the northwest quarter and the south half of the south half; entire section three (3); in section four (4), the southeast quarter and north half; in section five (5), the south half; in section six (6), the south half; in section eight (8), the north half of the north half, the southwest quarter of the northwest quarter, and the south half; in section nine (9), the north half; in section ten (10), the north half of the northeast quarter, the northeast quarter of the northwest quarter, and the southwest quarter of the northwest quarter; in section twelve (12), the entire section.

In township sixteen (16) north, range twelve (12) west—in section eight (8), the west half of the southeast quarter; in section nine (9), the southwest quarter; in section twenty-one (21), the northeast quarter; in section twenty-two (22), the west half; entire section thirty-three (33); in section thirty-four (34), the south half; together with the tenements, hereditaments, and appurtenances thereunto now or hereafter belonging, or in any wise appertaining, 263 or thereupon situated; to have and to hold the above-bargained premises unto the said party of the second part, and to his heirs and assigns, to the sole and only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever: Provided, always, and these presents are upon this express condition, That if the said party of the first part shall and do, well and truly, pay or cause to be paid, to the said party of the second part the sum of twenty thousand dollars ($20,000) in manner following, to wit: ten thousand dollars ($10,000) in four (4) months and ten thousand dollars ($10,000) in six (6) months from the date hereof, with interest at eight (8) per cent., according to four certain promissory notes of five thousand dollars ($5,000) each, bearing even date herewith, executed by said William Peter to the said party of the second part, then these presents and said promissory notes shall cease and be null and void.

And in case of the non-payment of any or all of said sums of money above mentioned, or of the interest or any part of said principal or interest, at the time, in the manner, and at the place above limited and specified for the payment thereof, then and in such case it shall and may be lawful for the said party of the second part, his heirs, executors, administrators, or assigns, and the said party of the first part do hereby empower and authorize the said party of the second part, his heirs, executors, administrators, or assigns, to grant, bargain, sell, release, and convey the said premises, with the appurtenances, at public auction or vendue, and on such sale to make and execute to the purchaser or purchasers, his, her, or their heirs and assigns, forever, good, ample, and sufficient deed or 264 deeds of conveyance in law, pursuant to the statute in such case made and provided, and out of the proceeds of such sale to retain the principal and interest of all sums then due, the costs and charges of such vendue and sale, and also the attorney fee hereinafter provided, rendering the surplus moneys (if any there should be) to the said party of the first part, his heirs, executors, or administrators.

And it is further expressly agreed that as often as any proceeding is taken to foreclose this mortgage, either by virtue of the above power of sale, in chancery, or in any other manner provided by the law, said first parties shall pay said second parties one hundred dollars as a reasonable solicitor or attorney fee therefor, in addition to all other legal costs.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

WILLIAM PETER. [L. S.]

Signed, sealed, and delivered in presence of—

ALFRED RUSSELL.
HENRY RUSSELL.

STATE OF MICHIGAN, } ss:
County of Wayne, }

On this 25th day of October, in the year one thousand eight hundred and seventy-five, before me, a notary public in and for said county, personally appeared William Peter, to me known to be the same person described in and who executed the within instrument, and acknowledged the same to be his free act and deed.

HENRY RUSSELL,
Notary Public, Wayne County, Mich.

265 REGISTER'S OFFICE, } ss:
Newaygo County, }

Received for record this 30th day of October, A. D. 1875, at 11 o'clock a. m., and recorded in liber nine of mortgages, on page 314.

W. PERSONS,
Register of Deeds in and for said County.

EXHIBIT A 1.

$10,000. DETROIT, MICH., *Oct.* 29, 1875.

Three months after date I promise to pay to the order of A. H. Adams, Esq., cash-, ten thousand dollars, at the Detroit Savings Bank, value received, with interest at ten per cent. per annum until paid.

CHAS. C. CADMAN.

Endorsement on back of note: C. C. Cadman, $10,000.

Collateral to this note there if deposited: One note, William Peter, $5,000, at eight per cent., October 25th, four months' date, and one note, Wm. Peter, $5,000, interest at eight per cent., six months' date.

5,136.66, fifty-one hundred and thirty-six $\frac{66}{100}$ dollars, February 26, 1876. W. Peter.

5,265.28, fifty-two hundred [and] thirty-five $\frac{28}{100}$ dollars, May 6, 1876. Wm. Peter.

EXHIBIT B 1.

$5,000. DETROIT, MICH., *October 25th*, 1875.

Four months after date I promise to pay to the order of C. C. Cadman five thousand dollars, at Merchants' and Manufacturers' Bank, Detroit, value received, with interest at eight per cent.

WILLIAM PETER.

266 This note is collateral to one made by W. Peter, Feb'y 26' '76, for same amount, at sixty days. Endorsed on back by C. C. Cadman.

EXHIBIT B 2.

$5,000. DETROIT, MICH., *October 25th*, 1875.

Four months after date I promise to pay to the order of C. C. Cadman five thousand dollars, at Merchants' and Manufacturers' Bank, Detroit, value received, with interest at eight per cent.

WILLIAM PETER.

This note is collateral to one of same amount, made by W. Peter, dated Feb. 28, '76, at sixty days. Endorsed on back by C. C. Cadman.

EXHIBIT B 3.

$5,000. DETROIT, MICH., *October 25th*, 1875.

Six months after date I promise to pay to the order of C. C. Cadman five thousand dollars, at Merchants' and Manufacturers' Bank, Detroit, value received, with interest at ten per cent.

WILLIAM PETER.

Endorsed on back by C. C. Cadman.

EXHIBIT B 4.

203.33 int.

$5,000. DETROIT, MICH., *October 25th*, 1875.

Six months after date I promise to pay to the order of C. C. Cadman five thousand dollars, at Merchants' and Manufacturers' Bank, Detroit, value received, with interest at eight per cent.

WILLIAM PETER.

Endorsed by C. C. Cadman on back of note.

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EXHIBIT C 1.

Know all men by these presents that I, Charles C. Cadman, of the city of Detroit and State of Michigan, of the first part, for and in consideration of the sum of ten thousand dollars, lawful money of the United States of America, to him in hand paid by the Detroit Savings Bank, of the second part, at or before the ensealing or delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over, unto the said party of the second part, a certain indenture of mortgage, bearing date the twenty-fifth day of October, one thousand eight hundred and seventy-five, made by William Peter, of Toledo, Ohio, to the party of the first part, and recorded in register's office of the county of Newaygo, in liber nine of mortgages, at page 314, with all and singular the premises therein mentioned and described, together with two of the notes or obligations therein also mentioned. and the moneys due, and the moneys now due, and the interest that may hereafter grow due thereon; to have and to hold the same unto the said party of the second part and their assigns forever, subject only to the provision in the said indenture of mortgage mentioned. And I do hereby authorize and appoint the said party of the second part my true and lawful attorney, irrevocable in my name or otherwise, but at my proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the sum or sums of money now due and owing, or hereafter to become due and owing, upon the said notes and mortgage, and in case of payment to give acquittance or other sufficient discharge 268 as fully as I might or could do if these presents were not made; and I do hereby, for my heirs, executors, and administrators, covenant, promise, and agree to and with the said party of the second part that there is now due upon the said notes and mortgage the sum of twenty thousand dollars, and that I have good, right, and lawful authority to grant, bargain, and sell the same in manner aforesaid.

CHARLES C. CADMAN. [L. S.]

Sealed and delivered the twenty-ninth day of October, 1875, in presence of—

A. H. ADAMS.
N .W. O'BRIEN.

STATE OF MICHIGAN, }
County of Wayne, } *ss:*

On this twenty-ninth day of October, A. D. one thousand eight hundred and seventy-five, before me, a notary public in and for said county, personally appeared Chas. C. Cadman, to me known to be the person described in and who executed the within instrument, [and] acknowledged the same to be his free act and deed.

A. H. ADAMS,
Notary Public.

REGISTER'S OFFICE, }
Newaygo County, } *ss:*

Received for record this 8th day of May, A. D. 1876, at 9 o'clock a. m., and recorded in liber 8, assignment of mortgages, on page 399.

W. PERSONS,
Register of Deeds.

EXHIBIT 7.

DETROIT, *October* 15, 1875.

Mr. William Peter, of Toledo, Ohio, has this day loaned me his

two notes—$5,000—for my own use, one dated October 16,
269 '75, at three months' date, and one dated October 18, '75, at 3 months' date, payable with ten per cent. interest. I do hereby agree to hold said William Peter harmless from loss, and to pay them myself when due.

CHAS. C. CADMAN.

270 THE UNITED STATES OF AMERICA, *Western District of Michigan, Southern Division,* } *ss:*

I, Henry M. Hinsdill, clerk of the circuit court of the United States for the sixth circuit and western district of Michigan, do hereby certify that the foregoing is a true and compared copy of the files and records and the whole thereof in the proceedings of said court in said entitled cause.

Witness my official signature and the seal of said court at Grand Rapids, this 23 day of March, in the year of our Lord one thousand eight hundred and eighty-three.

[Seal of the U. S. Circuit Court, Western District of Mich., Southern Division.]

HENRY M. HINSDILL, *Clerk.*
By JOHN McQUEWAN, *Deputy.*

Endorsed on cover: W. Michigan C. C. U. S. No. 224. Charles C. Cadman, appellant, *vs.* William Peter. Filed 7th May, 1883.

118-73

Office Supreme Court U. S.
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JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

October Term, 1885.

CHARLES C. CADMAN, *Appellant*, *vs.* WILLIAM PETER.	No. 224.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

BRIEF OF C. I. WALKER, OF COUNSEL FOR APPELLANT.

SUPREME COURT OF THE UNITED STATES.

CHARLES C. CADMAN,
Appellant.
vs.
WILLIAM PETER.

BRIEF OF C. I. WALKER FOR APPELLANT.

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1. On the 25th of October, 1875, the complainant, Cadman, conveyed to the defendant, Peter, some 5400 acres of pine lands in Newaygo county, Michigan. The deed was an ordinary warranty deed, for the nominal consideration of $20,000.

Record, pp. 28. 31, 60 and 134.

2. The object of this bill by Cadman, is to have said deed declared to be a mortgage, upon the ground that it was so intended and agreed at the time, and that Peter held it as a mere security for advances made to Cadman.

Record, p. 30.

3. There was no written defeasance, and the parties are in direct conflict upon this question of whether the deed was intended as a security, or as an absolute conveyance.

4. The decree below was in favor of the defendant, and the complainant appeals to this court.

I.

LAW.

Before discussing the facts, we make reference to some general rules of law applicable to the case.

1 It is the settled law of Michigan, as well as of this court, that parol testimony is admissible to prove that a deed absolute is intended as a mortgage, and if so proved it may thus be treated.

Wadsworth vs. Loranger, Harr. Ch., 113.
Emerson vs. Atwater, 7 Mich., 12.
Tilden vs. Streeter, 45 " 533.
Hurst vs. Beaver, 50 " 612.
Ferris vs. Wilcox, 51 " 105.
Russell vs. Southard, 12 How., 139.
Babcock vs. Wyman, 19 " 289.
Villa vs. Rodriguez, 12 Wall., 323 and 339.
Peugh vs. Davis, 96 U. S., 332.
1 Jones on Mortgages, Sec. 285.

2. Undoubtedly in these cases the burden of proof is upon the party seeking to show a deed absolute to be a mortgage, and the testimony must be clear.

Howland vs. Blake, 97 U. S., 624.
Tilden vs. Streeter, 45 Mich., 533.
1 Jones on Mortgages, Sec. 335.

3. If the evidence shows that the deed was in fact given as security for a pre existing debt, or for advances made or to be made, or for both, it is to be treated as a mortgage irrespective of its form.

Whether given as a security, to use the language of Judge Swayne, "is the very hinge of the controversy."

Russell vs. Southard, 12 How., 148 and 153.
Villa vs. Rodriguez, 12 Wall., 336.
Peugh vs. Davis, 96 U. S., 336.
2 Jones on Mortgages, Sec. 1039.

4. In determining this question whether a deed is to be construed as a mortgage, the adequacy of the consideration is an important element.

Russell vs. Southard, 12 How., 148, and cases cited.
Peugh vs. Davis, 96 U. S., 332.

5. So also are the confidential relations between grantor and grantee.

Babcock vs. Wyman, 19 How., 296-8.

6. So also are the necessities of the borrower.

Russell vs. Southard, 12 How., 155.

7. A promise to repay is not essential to constitute a deed a mortgage.

Russell vs Southard, 12 How., 152, and cases above.

8. The fact that the grantee is to have the entire management of the property does not prevent a deed becoming a mortgage.

Babcock vs. Wyman, 19 How., 289 and 294.
Emerson vs. Atwater, 7 Mich., 12.

9. The cases cited by the district judge to sustain the decree, are cases where it was held that the deed was not intended as a security, and they are therefore not applicable.

Baker vs. Thrush, 4 Den., 405.
Macaulay vs. Porter, 71 N. Y., 177.

10. If the deed was intended as a security, the right to redeem attaches thereto, even if the grantor at the time agrees to release this right of redemption.

1 Jones on Mortgages, Sec., 251.
2 Jones on Mortgages, Sec , 1039.

11. The vital question, therefore, is whether the deed in question was intended by the parties thereto as a security. If so the decree was clearly wrong.

GENERAL FACTS.

1. *The relations of the parties.*

In 1868, Cadman became the cashier of the Merchants and Manufacturers' Bank, in the city of Detroit, and continued so until 1876. He had previously been employed in the Michigan Insurance Bank.

Cadman, p. 41.

Peter, a lumber dealer, as early as 1871, was a stockholder in the bank of which Cadman was cashier, owning $10,000 of stock, and was also a large borrower.

Peter, p. 101.
Cadman, p. 39.

He was very intimate with Cadman, and as early as 1871 gave him a proxy to represent his stock, (p. 133;) and as early as 1872 he loaned to Cadman, without security, his two individual notes of $5000 each, solely for Cadman's accommodation, relying upon the promise of Cadman that he would take care of them. These notes were renewed from time to time until the fall of 1875, and after the execution of the deed in question, when they were paid by Peter.

Cadman, pp. 34 and 5.
Peter, pp. 93 and 4.

It was very clear from the testimony that Cadman was inclined to speculate in stocks, &c., or, as he called it, to *make investments*. His losses in this respect had been very great, growing doubtless out of the panic and financial disasters of 1873, and the years immediately following.

Cadman. pp. 42, 43, 44, 45 and 51.

Thus he had lost $20,000 in one railroad enterprise at the south, and he lost also in various other operations.

Cadman, p. 79.

He was in a greatly embarrassed condition in the summer and fall of 1875, when the events occurred out of which this suit has grown.

Thus he owed $10,000 to Peter for the notes loaned him, and other debts.

Cadman, pp. 78 and 79.

But he owed nothing to the bank whose officer he was.

Cadman, p. 47.
Letter, p. 101.

2. In July, 1875, one Milton D. Ward owned some 5400 acres of pine lands in the county of Newaygo, Michigan. He was a wild, dissipated chap, then engaged in the controversy in relation to his father's will, from which he hoped to derive large sums of money. His necessities in connection with said litigation, were very great, and he offered to sell the lands in question for $20,000.

Russell, pp. 85, 92.
Cadman, p. 35.

They had been examined by Mr. Rankin, a well known expert in examining pine lands, who had in 1873 and 4 carefully investigated their value and the amount of timber upon them, for George S. Frost & Co., and he gave a certificate as to their value.

Steele, p. 27.
Cadman, pp. 35, 37.
Rankin, p. 92.
Certificate, pp. 131-2.

These estimates show that there was then on the land at least forty million feet of lumber, worth from $1.50 to $2 per thousand standing, and that the land was worth at least $60,000, and from that to $120,000.

This value is not disputed. Peter, sent a man to examine the lands, but does not state how they were estimated. This silence is very significant.

Peter, p. 116.

Cadman was not in a condition to buy these lands, and the only motive for doing so was the almost absolute certainty that he could in a very short time make a large sum of money by the purchase.

The result was that he agreed to buy these lands of Ward, for $20,000, and on the 10th of July received a deed therefor, and paid a part of the sum down, and made further payments along from time to time as Ward's necessities required, till the actual payments amounted to about $24,000.

Cadman, pp. 35-6, 47, 71-7.

In early September, 1875, Cadman, through A. M. Steele, an experienced lumberman, offered these lands for sale, and received a cash offer therefor of $30,000; which offer was rejected on the advice of Steele, upon the ground that the lands were worth at least twice that amount.

Steele, p. 26.
Cadman, p. 36.

3. Failing in this attempt to sell, Cadman, through Alfred Russell, Esq., opened negotiations

for obtaining a loan upon said property, and to aid in this he supplied Mr. Russell, first, with the estimate of Rankin, (p. 92;) then with the certificate of George S. Frost & Co., and of Mr. Steele, as to the value of these lands.

Cadman, pp. 36-7.
Russell, pp. 64, 87.
Exhibit "A," pp. 131-2.

Russell was then in correspondence with J. C. Ayer & Co., of Lowell, Mass., who had been investing money through him in Michigan, and on the 15th of October he writes a letter to them, asking for a loan of $20,000, and making strong representations as to the value of the lands.

Letter, pp. 64 and 5.

His statements in relation to the value of the lands were based upon these certificates of Rankin, Steele, and Frost & Co., above referred to.

See pp. 92, 131-2.

On the following day, October 16, Peter, at the suggestion of Cadman, called upon Mr. Russell in regard to this proposed loan, and Russell then read to him the letter he had written the day before, or stated its contents; and Mr. Peter told him about the land, and assured him that the security offered was worth $120,000.

Cadman, p. 37.
Russell, p. 66.

Peter positively denies this interview, but Mr. Russell's testimony in this regard is put beyond any question by a copy of the letter which he wrote to Ayer & Co., on the same day, October 16, referring to

Mr. Peter's assurance that the lands were worth that sum, $120.000.

Russell, p. 66.

This negotiation was unsuccessful, because Ayer & Co. did not care to invest further in Michigan property. The letter declining the loan was received on the morning of the 25th of October.

Russell, p. 66.

CONTRACT.

On this same day, October 25, a contract was made between the parties in relation to these lands. A deed was made by Cadman and wife to Peter, and Peter executed his notes to the amount of $20,000, and delivered them to Cadman.

On the same day a mortgage was made by Peter upon the same lands to secure the payment of these notes.

QUESTION.

Was this transaction a sale of the land by Cadman to Peter for $20,000, or was it in the nature of a mortgage to secure Peter for the $10,000 which Cadman already owed him, and the $20,000 which he advanced him that day by his notes?

Complainant claims that this was a loan of Peter's notes to him, and that the deed was to secure the same together with the prior notes, and was in the nature of a mortgage.

Defendant claims that the transaction was an absolute sale of the land for $20,000.

COMPLAINANT'S POINTS.

1. Cadman had become the owner of the land in question. for which he had agreed to pay $20,000, but had actually paid considerably more.

Cadman, pp. 35, 71-7.

2. He was unquestionably deeply embarrassed, yet he had refused in early September $30,000 in cash for said land.

Steele, p. 26.
Cadman, p. 36.

3. He then authorized Alfred Russell, Esq., to negotiate a loan upon said land for $20,000 or $30,000, and this upon the basis of documents showing that it was worth at least $60,000, which was the lowest estimate.

Russell, pp. 64, 87.

4. On the 15th of October, Russell had written to Ayer & Co., of Massachusetts, soliciting a loan of $20,000, and recommending the property as worth $60,000. On that or the following day Peter called at his office to see him in regard to this matter, and he read to Peter the letter he, (R.,) had written to Ayer & Co., or stated its contents, and Peter told him that the security offered was worth $120,000, and Russell at the time wrote this fact of Peter's estimate to Ayer & Co.

Russell, pp. 64-66.

5. Ayer & Co., for reasons not connected with the value of the property, declined to make the loan, and Russell received their reply on the morning of October 25.

Russell, p. 66.

6. On the forenoon of the same day, Mr. Peter called at Mr. Russell's office, and was told that the loan had been declined. He expressed himself as "very sorry," and said that he had concluded to carry Cadman, himself—that Cadman already owed him $10,000, and that he had concluded to take the land, and let him have $20,000, and hold the property as security for the whole sum; but that he wanted a deed out and out, so that he could handle it.

Russell, pp. 67 and 88.
Cadman, pp. 38-9, 53-4, 57.

7. On the same forenoon, Cadman and Peter came to an agreement in relation to the matter in question, came to Russell's office together, talked over the matter, and directed that a deed for the conveyance of the land be made out, and it was made accordingly.

Russell, p. 88.
Cadman, pp. 37-9.

8. At noon of the same day, Harry Russel, then a clerk in the office of Alfred Russell, took the deed in question, and went to the house of Mr. Cadman, where it was executed by Mrs. Cadman.

Harry Russell, p. 120.
Cadman, p. 107.

9. The deed and notes were delivered soon after noon, and before banking hours had closed, and Cadman took the notes to the bank for the purpose of getting them discounted; but he found that he could not do this without furnishing collateral, as they were longer and larger than usual bank paper.

Cadman, pp. 80, 107.
Russell, p. 89.
Walker, p. 110.

10. Cadman immediately called upon Peter, at the Exchange, to make out a mortgage upon the same property, to enable him to use the notes in question.

This was an after-thought, growing out of the refusal of the bank to discount without collateral.

Cadman, pp. 80 and 107.
Russell, p. 89.

DEFENDANT'S POINTS.

1. Early in September, about the time Cadman had been offered $30,000 in cash for the property in question, and had refused it, Peter testifies that Cadman offered to sell it to him.

Peter. p. 94.

2. From the 20th to the 30th of September he says it was offered to him by Cadman for $20,000, which was all he asked; (this being just after his refusal to sell for $30,000.)

Peter, p. 102.

3. In another place he testifies that this offer of $20,000 was made from the 10th to the 20th of October,—just when Cadman was nogotiating for a loan of $20,000 on the basis of a value of at least $60,000.

Peter, 103.

4. Peter denies positively the entire testimony of Russell as to his being at his office on the 15th or 16th of October, and talking with him about the proposed loan from Ayer & Co., and giving an estimate of the value of the land at $120,000.

Russell, pp. 66 and 7.
Peter, p. 96.

5. He contradicts all the other witnesses, namely,

the two Russells and Cadman, as to the facts and circumstances of the execution of the deed, notes and mortgage on the 25th day of October.

6. He says he did not dine with Cadman on that day, but at the Exchange, and paid for his dinner there, "which I can tell by the register."

Peter, pp. 115-16.

The register shows directly otherwise, and that he did not not take dinner there, although he arrived there before dinner.

Boldt, p. 117-18.

7. Peter say the first talk about the contract was after banking hours on that day, (being 4 p. m.; Cadman, p. 107,) and while walking to the Exchange with Cadman; and that Cadman went to Russell's office and had the papers made out, and he subsequently met Cadman at the bank by appointment, and went with him to Russell's office, where the papers were all ready for signing.

Peter, pp. 103-4

This, it will be seen, is utterly at variance with the statements of the other witnesses upon this subject.

8. His testimony is distinct that the transaction was a sale for $20,000—not a mortgage.

COMPLAINANT'S CLAIM.

1. It is exceedingly improbable that Cadman would have sold to Peter for $20,000, in long time notes, lands for which he had just refused $30,000 in cash, and which at the lowest estimate were worth $60,000, and which Peter had assured Russell were worth $120,000.

2. There are very great probabilities that Peter would assist Cadman by lending him his paper upon the security of these lands. Their relations were very intimate, and he had already lent to Cadman $10,000 of his paper without any security.

Then, Cadman, as cashier of the bank, to which Peter was largely indebted, could reciprocate favors, especially in Peter's embarrassed condition. As to this condition see Peter's testimony, p. 102.

3. The testimony of Peter is entitled to very little consideration or credit. He is not only contradicted by Cadman, but upon the most material and vital points by Alfred Russell, Esq., a distinguished member of the bar of this court, and Harry Russell, a most reputable member of the bar.

It will be claimed that the effect of Cadman's testimony is very much impaired by his letter of January 30, 1876.

See letter, p. 101.

When the circumstances under which this letter was written are fully considered, it reflects credit upon Mr. Cadman, and is not necessarily inconsistent with his present position.

As we have said, he was greatly embarrassed, and he had at this time reached the crisis of his affairs; he had resigned his position in the bank, and looked upon himself as a ruined man; had broken up housekeeping; and the future was without hope. For the time being, under the intense excitement following this crisis, he had no hope that he could redeem this land, and he knew that Peter had the power to sell it, and that he could apply the proceeds to the payment of the $30,000 indebtedness, and its accruing interest.

That letter was not intended to concede or make any statement of rights, and the other letters written to Peter about the same time show how deeply he felt the mortification of not meeting his paper.

See pp. 98-100.

We think, therefore, this letter is entitled to no weight as overthrowing the testimony of complainant.

Cadman's conduct according to his own statement has been entirely consistent with this claim. He left Detroit about the time of the letter referred to; but was back here in December, 1876, and had a talk with Peter in relation to his interest in the lands, that had not yet been sold.

Cadman, p. 39.

"He further testifies that when in California, in October, 1878, he wrote to Peter inquiring of him as to the lands, and what the prospect was of his realizing something therefrom, and that he received a letter in reply from Peter saying that nothing had yet been done. This letter, if in existence, is still in California, and he has been unable to find it.

Cadman, pp. 39, 40, 61.

It is true that Peter denies both the conversation and the correspondence; but, as we have shown, his testimony is not to be relied upon.

It will also be claimed that the testimony of H. N. Walker is adverse to the complainant upon two points.

He was at this time connected with the Detroit Savings Bank, with which Cadman did business. Cadman testifies that he went to the Savings Bank, on the afternoon of October 25th, to get one of Peter's notes discounted, but they said that they could not do it unless it was secured by mortgage or otherwise.

Cadman, pp. 80, 107.
Russell, p. 89.

The mortgage was then obtained, as we have stated, but it was not used that day, nor until the 28th, when it was assigned to the bank as security for a loan.

Cadman, p. 107.

Walker's testimony tends to show that they required the mortgage, as Cadman testifies.

Walker, p. 110.

Walker has an impression that on this occasion Cadman told him that he had negotiated this sale of lands for Ward, who was to pay him a commission therefor—thus excluding the idea that Cadman himself had any interest in the land except for commisions.

Walker, p. 100.

This impression, or recollection, is very clearly erroneous, and is inconsistent with established facts.

As we have seen, Cadman obtained a deed from Ward early in July, more than three months before this time, and his testimony shows most distinctly that Ward had been paid for the land from time to time and before the deed to Peter. This shows conclusively that Cadman was not a mere agent of Ward's in the sale of these lands.

Cadman, p. 71-6.

Walker further testifies upon another point, namely: that Cadman, at the time of his deep embarrassment and resignation, was indebted to the Savings Bank for a debt of honor, and that they were urging him for security; that he represented his great poverty, and did turn out some notes as security; but that he said nothing about having an interest in these lands.

Walker, pp. 110-11.

This is entirely consistent with Mr. Cadman's present position. This intangible interest, which he had no papers to show, was not the kind of collateral security that could be turned out to a bank; and his silence upon the subject of his having such security is of no force whatever.

We insist therefore that, taking into consideration the probabilities in the case, the great discredit that is thrown upon Mr. Peter's testimony and the clear and decisive testimony of both Mr Cadman and Mr. Russell as to the transaction being a security and not a sale, the complainant's case is established with great clearness.

But even if there was doubt upon the subject, it has been repeatedly held by this court, that the leaning of the court is in favor of treating such deeds as mortgages, and in doubtful cases they so treated them.

Conway's Executors vs. Alexander, 7 Cranch., 18.
Russell vs. Southard, 12 How., 151.

We ask therefore with confidence that the decree in this case be reversed, as decrees in similar cases have frequently been by this court.

C. I. Walker
for appellant

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118-73

Supreme Court of the United States.

October Term, 1885.

CHARLES C. CADMAN, *Appellant,* *vs.* WILLIAM PETER.	No. 224.

Appeal from the Circuit Court of the United States for the Western District of Michigan.

SUPPLEMENTAL BRIEF OF C. I. WALKER, OF COUNSEL FOR APPELLANT.

The brief of the defendant makes a severe and continuous attack upon the testimony of the complainant in this case, as inconsistent with truth and full of discrepancies; and with reference to these points we have a few suggestions to make. For the most part the alleged discrepancies are upon points not material to the issue in the case, but the purpose of such charges is to detract from the credibility of the complainant's testimony.

That there are some discrepancies in that testimony, is entirely clear. But it can be demonstrated, we think, that these discrepancies are not only entirely consistent with truth, but that they tend to show the truthfulness of the man and his desire to correct any erroneous statements that he may have made.

I.

As bearing upon this general question of his truthfulness, and to account for some of the erroneous statements made, it may not be improper to refer briefly to the history of the man, as shown by the record; for it is a somewhat peculiar one.

For many years previous to 1868, he was in the employ of the Michigan Insurance Bank. Then and subsequently he was addicted to speculations in stocks, or, as he would say, "making investments." At one time, in 1863, he had accumulated in this way $40,000.

Record, p. 51.

In 1872, this had been reduced to $15,000.

Ib.

In 1868, he became cashier of the Merchants and Manufacturers Bank, a new institution just started in Detroit, and continued in this position until January, 1876.

Record, p. 41.

He continued these "investments," sometimes making money, and sometimes largely losing; and his transactions of this kind in 1875 were large, and he was in the habit of borrowing money very freely.

Record, pp. 50 and 51.

About this time he met with some very severe losses, among them $20,000 in one transaction of a southern railroad, and became deeply embarrassed.

Record, p. 79.

His embarrassments became so great that in January, 1876, he resigned his position as cashier, and considered himself a ruined man. He soon after left Detroit, and after spending nearly a year in Chicago went to California to seek his fortune. He there lost his wife, and after a few years returned to Detroit.

During all this time there is no imputation as to his integrity, nor was he a defaulter to the amount of a single dollar.

He commenced giving his testimony in this case in June, 1881, and afterwards received from California a great many papers, letters, etc., bearing upon the questions at issue. His first testimony was given without the aid of such memoranda. As he says himself: "I am in the habit of working from memorandums, and the moment a thing is finished it passes out of my mind."

Record, p. 82.

Thus, in relation to his transactions with Mr. Ward, and the payments made to him, he first testifies without having any papers to refresh his memory. He had settled up with Mr. Ward, and did not keep memoranda of the matter, supposing that no question would ever come up.

Record, pp. 72 and 77.

Subsequently memoranda in relation to all his business were sent to him from California.

Record, pp. 40 and 72.

The examination of these documents and letters led to some corrections in his testimony.

Thus, when first examined, on the 1st of June, 1881, he testified that he had paid Mr. Ward $20,000, and that all of it was paid in the month of July.

Defendant's Brief, pp. 5 and 6.
Record, pp. 47 and 50.

On the 14th of July, after his reception and examination of the papers in question, he was recalled by his own counsel and further examined on the same subject, stating that since his former testimony he had made an examination of papers.

Record, p. 72.

That there are discrepancies in his testimony as to the time when these payments were made and the amount of the payments made, is very clear. But these discrepancies were not called out by the opposite counsel, but by his own, and for the purpose of correcting his testimony.

If he had permitted his testimony to stand as it was first given, it would have been more in his favor than it now is. The truthfulness of the man, rather his falsehood, is demonstrated by his corrections.

II.

Defendant also introduces the testimony of Henry N. Walker, as showing that Cadman was not the true owner, but was the mere agent of Ward in selling these lands, and was to get a commission therefor of from $2,000 to $5,000.

Defendant's Brief, p. 7.

This is not only expressly denied by Cadman, but Walker's testimony is vague, unsatisfactory and at variance with the established facts. The witness himself says that "it is a mere bare impression."

Record, p. 109.

At the time of this alleged conversation, Cadman had had the title to the lands for more than three and a half months, and it related to a matter that did not interest Walker as an officer of the bank; and he testifies to this impression after six years had passed. Under these circumstances, his testimony is entitled to no weight.

III.

Defendant's brief attacks the testimony of Cadman upon the ground that he first testified that "no security was given" at the time the deed was made.

Defendant's Brief, p. 13.

He simply testified that he did not remember any other paper. But his attention was not called to a "security."

Record. p. 55.

But when his attention was called to the fact of a mortgage being given upon the property, he answers: "I think there was."

Record, p. 60.

This furnishes no ground for attack upon the complainant.

IV.

It is claimed in defendant's brief that the testimony of Cadman, that the $10.000 notes of Peter, given him on the 25th of October, were presented to the savings bank for discount on the same day, is at variance with the other testimony in the case, and there is a disingenuous attempt in the brief to show that Cadman is contradicted by Henry N. Walker on this point.

Defendant's Brief, pp. 13-15.

But this is not so. Cadman says that on the day he received the notes, he took them at once to the bank to get them discounted, and they declined without collateral security.

Record, pp. 80 and 81.

He immediately found Mr. Peter, and they went to Russell's office and the mortgage in question was executed.

Record, pp. 80 and 107.

As Russell says, the deed had been executed in the forenoon, and the mortgage was an afterthought and executed in the afternoon.

Russell, p. 89.

It was then too late to accomplish the purpose, as it was after banking hours.

Cadman, p. 107.

It appears from the testimony of Henry N. Walker, that an application was made to the bank for a loan on the security of this mortgage on the 28th of October, three days after, and on the 29th Cadman's note was discounted with the notes and mortgage of Peter as collateral.

Mr. Walker does not testify that the note without the mortgage was not presented before that time, and on the 25th, and Mr. Cadman is in no way contradicted.

The memoranda of applications for loans were not entered upon the bank books in all cases where loans were applied for, but were entered especially where loans were asked for on real estate.

Walker, p. 108.

Mr. Walker's testimony clearly implies that the bank had previous to the 28th declined to make the loan without collateral security.

Walker, p. 110.

V.

Does the complainant's testimony sustain his theory that the deed in question was made as a security for the whole $30,000 of the notes of the defendant, Peter, which he had loaned to Cadman? This is denied in defendant's brief.

See pp. 15-26.

This view is attempted to be sustained by selecting from Mr. Cadman's testimony portions that are claimed to be inconsistent with other passages and with the theory of the bill.

But this testimony, taken in its connection, is entirely consistent with our theory of the case, namely: that the deed was taken as security for the old notes for $10,000, as well as for those for $20,000, executed contemporaneously. We give all his testimony bearing upon this point.

After testifying that Peter, upon learning that Ayer & Co. had declined to lend him the $20,000 upon the land, said that he would carry it himself, if he could lend his paper on time enough to throw it over to the next season, he further testified as follows:

"Q. Was there anything said in that connection about your indebtedness to him?

"A. Yes, sir.

"Q. What?

"A. About the taking care of the ten thousand dollar notes.

"Q. What was said?

"A. I told him that would be ample security for the ten thousand dollars besides. That was one object I had in making the arrangement with him, that it might secure the ten thousand dollars besides.

"Q. State what he said in relation to that?

"A. He acquiesced in that. I think he went down to my house to dinner that day, and we talked it over in going down and coming back, if I remember right.

"Q. Was there any different arrangement made before the papers were executed, or was that the arrangement; was there any change in that arrangement?

"A. I don't recall anything, sir. * * *

"Q. Now, let me go back; you said this land was to be security for the ten thousand and the twenty thousand. Was he to have any other interest in them? What was the arrangement?

"A. The arrangement was he was to have half of it, after paying my indebtedness to him; in other words he agreed to give me half of that (which) remained after I paid him from the lands what I owed him."

Record, pp. 38 and 9.

On cross examination he testified as follows:

"Q. Why didn't you pay this ten thousand dollars?

"A. Because I considered the land in his hands as ample security.

"Q. I know, but you say you gave him a paper that would save him harmless?

"A. Yes, sir.

"Q. Was there any arrangement made then and there that you should not pay these two five thousand dollar notes. I mean on the 25th of October, when the land was deeded to you ?

"A. The only remark that was made about it was : 'Now, Mr. Peter, you have ample security in your hands for the two notes of five thousand dollars.'

"Q. Who was to pay them when they did mature ?

"A. Why, he was to take care of it.

"Q. Then this deed was given to secure the payment of this as a whole ?

"A. It wasn't so stipulated at the time.

"Q. Was it afterwards ?

"A. No ; we simply had a conversation about it.

"Q. No agreement ?

"A. No agreement.

"Q. Then as a matter of fact it was never turned over to secure them ?

"A. The fact that there was margin ; it was all that there was necessary.

"Q. You considered that he would make over and above ten thousand dollars, enough to secure the twenty thousand dollars ?

"A. Yes, and twice that. He told me himself the land was worth over $100,000.

"Q. When ?

"A. Within a week of the time the transaction culminated.

"Q. Before or after ?

"A. Before and afterwards too.

"Q. Did he claim that he had ever seen it ?

"A. No; but he knew the estimates.

"Q. Now, let me ask the question so there will be no misunderstanding; was there any positive arrangement made between you and Mr. Peter, by which the lands were to secure him upon the first of those two $5000 notes?

"A. There was an understanding between us if he made the advance of those two notes, and took a deed of that, it would be ample security for the indebtedness."

Record, pp. 26-7.

On cross examination, defendant drew out from Cadman, that he made a memorandum of the transaction, and Cadman is asked to give it in detail.

Record pp. 82-84.

The gist of the whole matter is given in answer to a question of defendant's counsel, as follows:

"Q. And what was it, as near as you can remember?

"A. I don't remember the whole details of it fully, except as I explained it there; the transaction that I have had with Mr. Peter for $30,000, and that he took so much land, which he was to pay himself from and divide the balance with me.

"Q. That was the memorandum, as near as you can remember?

"A. That was the memorandum; yes, sir."

Taking this all together, it is entirely clear that Cadman testifies that the deed was given to secure the whole $30,000, and that his testimony can bear no other construction.

Mr. Russell's testimony fully sustains the same view.

Record, pp. 67 and 88.

The brief of the defendant has this most remarkable statement in relation to Mr. Russell's testimony: "The testimony shows conclusively that Russell did not hear the details of the bargain between Peter and Cadman."

See p. 29.

The best answer to this is the testimony of Mr. Russell:

"Mr. Peter came to me in my office and inquired in regard to the loan, whether Dr. Ayer was going to make it, and he subsequently said to me—of course I told him that Dr. Ayer declined the loan—he subsequently came and said that he had concluded to carry Cadman himself on that land; that Mr. Cadman already owed him $10,000, and he had concluded to take a deed of the land and let him have $20,000 more, and hold the property as security for the whole sum of $30,000. He said that he wanted a deed out and out, so that he could handle it, and he and Mr. Cadman came to my office and desired me to prepare the papers. I don't remember whether Mr. Cadman was with him or not the first time, but I think he was."

Record, p.67.

On cross examination, his testimony is as follows:

"Q. Was there any conversation between the parties in your presence as to their bargain? It was not made there in your office, was it?

"A. No, I think they had made their bargain before they came there; that is my recollection; and of course there was something said about it. The substance of it was that Mr. Peter had concluded to carry Mr. Cadman himself." * * *

"Q. What was said, as near as you can remember, between them, in your presence, when they first came in, or when the deed was drawn there?

"A. As near as I can recollect about that, Mr. Peter observed that he was very sorry that Mr. Cadman could not get the loan east, or here, and that he had concluded to carry Mr. Cadman himself.

"Q. How much was he going to loan him?

"A. As I understood, $20,000.

"Q. And then what else was there between them spoken there?

"A. That the amount which Mr. Cadman was already indebted to Mr. Peter would be secured by this transfer, the same as the amount which he was about to let him have upon those notes.

"Q. Or in other woods the deed was turned over to him to secure him for $30,000?

"A. Yes, sir; that is my understanding of it.

"Q. You understood that from the conversation between the parties?

"A. Yes, sir."

Record, pp. 87-8.

Cadman also testified that the arrangement was concluded at Russell's office.

Record, pp. 38 and 53.

It is very clear therefore by the testimony of both Cadman and Russell, that the deed was given to secure the whole $30,000. If given as security at all, no other result would be reasonable or probable. Peter well knew Cadman's great embarrassment, and if he were to take security at all he would take it for his entire debt.

VI.

But it is insisted that Cadman's testimony is untrue and inconsistent with itself upon the subject as to whose duty it was to take care of the two notes originally loaned him by Peter, of $5,000 each. By disingenuous selections, leaving out the proper connection, the brief of defendant seeks to make the court believe, that Cadman testified that he was not to pay this $10,000, but that Peter was to pay it.

See pp. 18 and 21.

If the testimony in connection had been printed, it would have appeared very clearly that Cadman's only expectation was that Peter was to carry them for a time, because he was amply secured by the land in question; but that he, Cadman, was to help carry them if possible, and that he was still Peter's debtor as to this amount.

Thus, the brief at the top of page 20 prints in italics a question and answer that standing alone would seem to imply this:

"Q. And you never claimed after you put this security into his hands that you ought to pay it—that $10,000?

"A. No, sir."

If what follows had been copied it would have given an entirely different impression.

"Q. It was not a matter that concerned you particularly?

"A. Why, yes; our mutual agreement was that I should help him carry this load.

"Q. Help him to carry it by placing this property in his hands?

"A. Yes, and if my position was such that I could, I would help him carry it.

"Q. And if not he was to carry it himself?

"A. Yes, sir.

"Q. Your circumstances were such that you could not do anything?

"A. I could not at that time.

"Q. They have not been any better since?

"A. No, sir."

Record, p. 58.

It is very clear from this and from all the testimony that this $10,000 was a loan by Peter of his note to Cadman, and for which loan Cadman was clearly his debtor, and he held Cadman's obligation to take care of this paper, which he himself has produced.

Exhibit "7," pp. 139 and 140.

And Cadman's entire conduct subsequently is in accordance with this view.

VII

It is claimed by defendant that there is no suggestion that Cadman would be liable to Peter for any deficiency which might occur in the sale of the land, treating it as a mortgage.

Brief, p. 37.

That he was personally liable to Peter for the whole $30,000 upon complainant's theory, is beyond any question. Peter had lent to him his negotiable notes, which Cadman had used for his own purposes. As a matter of law he would be liable to pay the balance if any.

VIII.

The defendant claims that the testimony of Cadman as to the California correspondence with Peter is not admissible.

Brief, p. 33.

We submit that there is no force in this objection. Cadman's testimony is, that in 1878 he wrote to Peter from California inquiring after these lands. And he testifies that he wrote him no other letter.

Record, p. 39.

Notice was given to produce a letter written from California in 1878. It is claimed that no date was given in the notice, and no reference to its contents.

Record, p. 39.

We submit that the notice was sufficient, no other letter having been written but the one in question, and it gives the defendant ample notice what letter it was that complainant wished.

Again, it is objected that the testimony of Cadman as to the contents of a letter he received from Peter in reply, is not admissible.

Cadman testifies that he had received the letter, and that he had had his letters sent on from California, and had examined them paper by paper, and had not found the letter. We submit that this is sufficient evidence of the loss to enable us to give secondary evidence.

Record, p. 40.

IX.

Another illustration of the fairness of defendant's brief, is the statement on page 36, that "it is also established by the proofs, that for three months, Russell and Cadman had been trying to effect a loan on these lands for $20,000 on long time."

Counsel must have known from the exhibits and evidence in the case, that the lands were not put into Russell's hands for this purpose until after the 1st of October, and probably not until the 10th of October, and only a few days before the sale. This is fully established by the testimony of Mr. Russell.

Record, pp. 64 and 87.

And also by the exhibits which were put into Russell's hands at the time, showing the value of the lands, bearing date October 2 and 6.

Exhibit "A 2," pp. 131-2.

CONCLUSION.

It seems impossible to come to any other conclusion, under the clearly established facts of this case, than that the deed was given by way of security for the sum of $30,000.

We have all the elements that go to make up such an understanding:

1st. The confidential relations between Cadman and Peter at the time of the transaction, and which had existed for years.

This an important element.

Babcock vs. Wyman, 19 How. 296 and 8.

a. Cadman was the cashier of the bank of which Peter was a stockholder and a large borrower.

b. He had clothed him with a proxy to vote for his stock at the meetings of the stockholders.

c. He had loaned him his notes for $10,000 without security, and it would appear for some years without any written agreement from Cadman that he would take care of them.

The only written agreement of that kind that appears, bears date October 15th, 1875.

Exhibit 7, pp. 139 and 140

d. According to Peter's own statement, one object in lending these notes to Cadman was to enable him to purchase more stock in the bank in which he was cashier, with the understanding that the stock was to be considered Peter's until the notes were paid. But of this understanding there was no written evidence.

Record, p. 93.

These facts show that the relations of the parties were extremely confidential.

2nd. The necessities of Cadman were very great and were thoroughly known to Peter, as shown by all the testimony.

This an important element.

Russell vs. Southard, 12 How, 155.

3rd. The gross inadequacy of the consideration tends very strongly to show that the transaction was not a sale but a security.

Russell vs. Southard, 12 How., 148.
Peugh vs. Davis, 96 U. S., 332.

The pretended consideration of the sale is $20,000. The lowest estimate put upon the lands is $60,000, while Peter himself estimated them at from $100,000 to $120,000.

Russell, p. 66.
Cadman, p. 37.

4th. The improbability that Cadman would sell to Peter this land for $20,000—less than one third of its value—when he had just refused a cash offer of $30,000, is so great as to make the arrangement utterly improbable and beyond belief.

5th. It does not detract from the character of the transaction being a mortgage, that the grantee was to have the control of the property.

Babcock vs. Wyman, 19 How., 289 and 294.
Emerson vs. Atwater, 7 Mich., 12.

Nor that there was no express promise to repay the debt thus secured.

Russell vs. Southard, 12 How., 152.

Nor that the agreement did not contemplate a redemption, but a sale by the grantee.

1 Jones on Mortgages, Sec. 251.
2 " " " " 1039.

Finally we have the clear emphatic testimony of Mr. Russell and Mr. Cadman, that the deed was given as a security in the nature of a mortgage, decidedly outweighing the unsupported testimony of Mr. Peter.

A decree holding that the deed was a mortgage, and that the complainant has a right to redeem by paying the whole $30,000 and interest, together with taxes and other expenses would be thoroughly equitable in character, and we submit confidently that such a decree should be made.

C I Walker of Counsel
for Appellant

118-73

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JAMES. H. McKENNEY.
CLERK.

No. 224.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1885.

CHAS. C. CADMAN,
Complainant and Appellant,
vs.
WILLIAM PETER,
Defendant and Appellee.

BRIEF OF GEER & WILLIAMS,
Solicitors for Defendant.

Lapeer Democrat Print.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1885.

No. 224.

CHARLES C. CADMAN,
Appellant.
vs.
WILLIAM PETER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF MICHIGAN.

BRIEF OF GEER & WILLIAMS,
Solicitors for Defendant.

The bill was filed in this case to have a warranty deed, executed by complainant to the defendant on the 25th day of October, A. D. 1875, declared an equitable mortgage; and asks to redeem the premises therein described. The bill was filed in April '81, five and one-half years after the execution and delivery of the deed. The principal allegations of the bill are:

1. That in 1874 or '75 complainant was indebted to defendant in the sum of ten thousand dollars for the use of his two promissory notes of five thousand dollars each.

2. That, upon the 25th day of October 1875, complainant was seized and possessed of five thousand four hundred acres of pine land situated in Newaygo county; that complainant was anxious to procure the further sum of twenty thousand dollars from the defendant; and that it culminated in an agreement substantially as follows:

"In addition to the sum of ten thousand dollars already loaned by complainant, the defendant agreed to advance and loan to complainant the further sum of twenty thousand dollars, to be furnished by two notes of ten thousand dollars each. And complainant was thereupon to execute and deliver a deed of said land to said Peter, as security for all the before-mentioned advances, and the said Peter was to hold said land until such time as it might be sold at a profit or for a greater sum than could be then realized, and when such time should come was to sell said land in the most advantageous manner possible, and out of the proceeds arising from such sale was to pay himself the said sums of ten and twenty thousand dollars, and interest thereon at the rate of seven per cent. per annum and the taxes on said lands that he should have paid, and should divide the surplus, if any, paying over to complainant one-half and retaining the other half of the surplus to recompense him for his labor, trouble and expense in and about the sale and disposal of said property."

3. That the transaction was intended to operate as a security for the repayment of the ten and twenty thousand dollars. The complainant asks for an accounting; that the deed, absolute in form, may be decreed an equitable mortgage and intended as a security only; and that complainant may be permitted to redeem said lands by paying the amount found to be due the defendant on the accounting.

The answer denies all of the material allegations in the bill. The defendant denies that said deed was given to secure him for his two promissory notes of five thousand dollars each. He alleges in his answer by way of defense that he purchased the land in question for twenty thousand dollars on the 25th day of October 1875. He denies that said deed was intended as a security for money loaned; and denies that the complainant has any interest in the premises in question, either legal or equitable. Replication was filed in due form.

The bill was dismissed on the hearing; and complainant appeals.

The complainant's claim made by his bill, sworn to by him, is that this deed was executed and delivered to defendant to secure him for ten thousand dollars that defendant had previously advanced, and for twenty thousand dollars advanced by defendant at the date of the deed. In 1872 Cadman, being desirous of raising money, obtained from Peter two notes of five thousand dollars each. Peter was not indebted to Cadman, but let him have these two notes for his accommodation, Cadman agreeing to take care of them and to save Peter harmless. These notes were renewed from time to time as they became due, Cadman paying the interest. October 15th 1875, the notes were renewed by one note of five thousand dollars, dated October 16th, due in three months, and one note of five thousand dollars, dated October 18th, at three months, both drawing ten per cent interest. This is the ten thousand dollars referred to in paragraph one of complainant's bill. There is some conflict between the parties as to the use Cadman desired to make of the ten thousand dollars when he received the two notes in 1872. Peter says he claimed he wanted to use them to purchase stock in the Merchants' and Manufacturers' Bank, so that he might retain his position as cashier. Cadman says he wanted them for financial backing; that he used them to purchase stock in different corporations.

The lands described in the bill of complaint were deeded to Cadman by Milton D. Ward, July 10th, 1875. There is no direct evidence in the case corroborating Cadman's claim that the deed from him to Peter was intended as a security for money advanced to him by Peter, except his own testimony.

It becomes important therefore to examine all his testimony carefully for the purpose of ascertaining what credence should be given that part of it bearing directly upon the arrangment between him and Peter when the deed in question was executed. With reference to the purchase of the land from Ward, Cadman says:

"I bought these lands from Ward in July 1875 and paid him twenty thousand dollars for them, in money. Used my own resources and other resources I had. Paid him in cash. I don't remember how much money I had; perhaps three or four thousand dollars. The other securities I referred to were car-loan stock and other securities." (Record, p. 47.) "I paid Ward all up in the month of July. Paid him all the money down, within one thousand dollars." (Record, p. 50.)

This testimony was taken June first '81. July 14th '81, Cadman was re-examined, when he testified that he had not paid Ward anything at the time the deed was made to him by Ward. "Ward got the money for the purpose of contesting his father's will. The first advance was made before the date of the deed. At the time of the date of the deed I agreed to advance him upon the land $20,000. In the first instance the deed was given as security for money advanced and to be advanced, with an agreement that the lands should be mine as soon as I got the advances made. And under the agreement I advanced him over twenty-four thousand dollars."

dollars. If I was to say what my impression was I should say it was $5,000. I would not say that he was to have $5,000."

Q.—"But it was something?" A.—"He was to get some compensation from Ward for making the negotiations." (Record, p. 109.)

William Peter testifies:

Q.—"Did you have any conversation with Mr. Cadman from whom he purchased these lands?" A.—"Yes, sir."

Q.—"From whom did he state?" A.—"Milton D. Ward."

Q.—"Did he inform you how much he paid for them?" A.—"No, sir: he said to me if I would buy these lands from him at $20,000 he would make $2,000. I asked him if this $2,000 would apply on the $10,000 which I loaned him the notes for. He says, certainly; that is what I want to make some money for, to get that $10,000 out of the way." (Record, p. 95.)

We insist that Cadman's testimony with reference to the amount paid Ward, the time when paid and the sources from which he obtained the money is not true. He says:

"I paid Ward twenty thousand dollars for those lands, in money. Paid him the cash. Used my own resources and other resources I had. I had of my own, perhaps, $3,000 or $4,000." (Record, p. 47.) "Q.—Now, then, is it not true that the money Mr. Peter paid you or the notes that he gave you were used in paying Ward? A.—No, sir. Q.—Not a dollar of it? A.—I have no knowledge of any such thing. Q.—I now refer to these notes you got at the time you deeded him (Mr. Peter) the land; whether you used these for the purpose of paying Ward, or the proceeds of them? A.—I had settled with Ward long before that." (Record, p. 50.) "I paid Ward $24,668." (p. 77.)

As we understand the evidence in this case it shows conclusively that he did use the money he got on the notes given him by Peter, when the deed was made, to pay Ward; and he did not pay $24,668 for the land.

We will consider these two questions together. Cadman's testimony, with reference to amounts paid Ward and the dates, is found on pp. 72 to 77 of the record.

"On the 8th or 10th of July, 1875, I paid him $500. On the 17th of July, I deposited to his credit in the bank $3,800. On the same day, I sent him a draft of $500 to New York. This $500 was not drawn from the $3,800 deposited to his credit in the bank. September 11th, I paid to the Merchants' and Manufacturers' Bank a draft that Ward had made on A. G. Spencer, amounting to $1,500: paid it from my own resources, out of the money I had in the tin box. The payment was made September 13th, I think: it was $1,800. September 14th, I paid $3,000, being a draft he drew on R. K. Bickford & Co. of Chicago: paid it out of the tin box. I paid $800, October 20th, '75; $250, October 22nd, '75; and about the same date, paid $1,500. About the 10th of October, I paid his note, endorsed by F. W. Noble, $1,003.80; and $1,000 on a note he gave to Arthur Edwards. I can't tell the exact date; it may have been after the 25th. I know I was obligated to pay a number of things of his by an agreement, and deposited $4,634 to his credit in the Merchants' and Manufacturers' Bank. The 23rd of October, I paid two or three items of disbursements, telegrams and money paid C. M. Swift, $325."

From his own testimony, therefore, he only paid Ward $19,112.80. And in this estimate we have called the payment of the Spencer draft, that he is not certain whether it was $1,500 or $1,800, $1,800. From this must be taken $500, for the books of the bank and Hayes' testimony ,(p. 122), show conclusively that the $500 draft, sent to Ward at New York by Cadman, was drawn from Ward's account, which leaves the amount paid by Cadman to Ward $18,612.80. This is what he paid, giving him the benefit of every reasonable doubt which the testimony in this case possibly raises. Our impression is that Cadman had nothing to do with the $3,810.50 which he claims he deposited to Ward's credit July 17th, and which we have included in the $18,612.80. The testimony of Hayes, cashier of the bank, demonstrates almost to a certainty that this $3,810.50 was made up of two checks, given by L. W. Tinker to Ward. He says:

"The deposit ticket is in Cadman's handwriting, who was cashier of the bank at that time; and judging from the check mark on the ticket I should judge it was checks, one item of $2,800 and another of $1,010.50. I find in L. W. Tinker's account, on the 17th of July, three checks, and among them one of $2,800 and one of $1,010.50."

If this deposit to Ward's credit was from these Tinker checks, then there should be taken from the $18,612.80 this $3,810.50.

Cadman claims that all or nearly all of the payments made by him to Ward were paid by cash which he took from his tin box; and says that over $20,000 of it was paid before he deeded the land to Peter, October 25th, and none of it was paid out of the money he received on the notes which he got of Peter at that time. We have shown that he did not pay Ward but about $18,000 in all. The payments which he claims to have made, with the exception of a few items of cash which we are unable to trace, were: the A. G. Spencer draft, $1,800, September 11th or 13th; the Bickford & Co. draft, $3,000, September 13th; Ward's note endorsed by Noble, $1,003.80, about October 10th; and $4,634 deposited to Ward's credit in the Merchants' and Manufacturers' Bank, about October 25th; making $10,437.80.

We call the attention of the court, in this connection, to the fact that the notes for $20,000, given by Peter to Cadman in payment for this land, were discounted by Cadman October

29th, '75. And the testimony of Hayes, cashier of the bank, shows that the Spencer draft, $1,800, was paid October 29th; the Noble note, $1,000, was paid October 29th; and the Bickford & Co. draft, $3,000, was paid November 16th, '75—it was drawn September 14th, due in 60 days. His testimony also shows that the $4,634.94, placed to Ward's credit, October 19th, was a part of the proceeds obtained by discounting the $10,000 draft, which Russell drew on Peter that day, and which Peter did not accept; and $10,000 of the money received from the $20,000 Peter paid for the land was doubtless used in taking care of the $10,000 draft, which Russell or Cadman had discounted, and which Peter refused to accept. (Record, p. 123 to 125. See also, as to this $10,000, Hays' testimony, record, pp. 126 and 127, and Cadman's testimony, record, p. 128.)

It seems to us clear, from the testimony, that Cadman paid about $18,000 and not $24,000 to Ward; that the most of it was paid after the 25th of October, when he deeded the lands to Peter, and not before; and that all or nearly all of the money that he paid to Ward was money that he obtained from Peter, and not money that he kept in his tin box. In other words, it shows conclusively that Cadman's testimony on these matters is not true. Russell claimed that Cadman was in the habit of depositing large amounts of money in his bank account; but the testimony of Hayes shows that the only money, in which Cadman was interested, that went into Russell's bank account, was $10,000, October 19th, the proceeds of the draft drawn on Peter that day, which he did not accept, and $10,000, October 29th, the day when the notes which Peter gave for the land ,October 25th were discounted, used to replace the money obtained on the $10,000 draft.

William Peter gave a mortgage back to Cadman to secure the payment of the twenty thousand dollars, purchase price of the land. The mortgage was executed the same day as the deed, viz: October 25th. Cadman had forgotten about the mortgage; and when first examined he said there was no security given, and again that he did not remember as there was any security given. (Record,.p. 55.) When it appeared, by defendant offering the mortgage in evidence, that one was given, Cadman stated that when the notes were given him he tried to get them discounted but was unable to do so without they were secured. His testimony on this point is as follows:

Q.—"How did it open?" A.—"I took the notes there in the first place to Adams. He took the thing into consideration." He says: "I can't use those notes as they are. I don't know Mr. Peter well enough to discount them on your endorsement." I also went to William A. Butler, and he says: "I don't know Mr. Peter well enough to discount his paper upon your endorsment."

Q.—"What date was that in reference to their being made?" A.—"That was on the morning of the 25th of October, I believe in the morning or at noon."

Q.—"You didn't get them until the 25th?" A.—"I see, the 25th; the morning of the 25th of October."

Q.—"They were not made until that day?" A.—Oh, well, I run right over there. I took the notes over in my hand; took them over there, showed them to them, and they thought about it a few minutes, and he says," "I don't think we can take it on Mr. Peter's endorsment. We don't know him well enough to take it on such long time."

Q.—"Then what?" A.—"I says, perhaps I can get a mortgage.

Q.—"Then what?" A.—"I went back; made an arrangement with Mr. Peter to have him give the mortgage in order that I might float the paper. I could not float the paper on as long time as that or any other time without having some additional security outside of his name and mine. The credit was not good enough. I went back, found Mr. Peter at the "Exchange," told him about it; he came back with me and went to Mr. Russell's office and Mr. Russell, if I remember right, drew the mortgage. I then took the mortgage and assigned half of it to Mr. Adams and half to Mr. Butler. It was made in the afternoon of the same day." (Record, p. 80.)

The facts are that Cadman made no attempt to discount these notes until the 28th of October, three days after the deed and mortgage were given. See testimony of H. N. Walker on this point, (record, p. 109,) and testimony of William Butler, (record p. 114.)

Cadman made the claim that the mortgage was given because he had failed in his attempt to discount the paper without security, for the purpose of supporting the theory that it was not a sale, but that Peter accepted the deed as a security for the loan of his notes to enable Cadman to raise the money. But the fact that he did not attempt to use the notes for three days after the mortgage was given shows conclusively that his statements as to why it was given are false; and also that Peter purchased the land absolutely, and executed the mortgage to secure the payment of the purchase money. Why would Peter give a mortgage to Cadman upon the land, if it was simply deeded to him to secure the twenty thousand dollars and the ten thousand dollars, as claimed by the bill? And if given to secure both sums, why was not the mortgage given for thirty thousand dollars?

We call the attention of the court to this conflicting testimony of Cadman for the purpose of showing that his recollection is at fault or that he wilfully misstates the facts.

The bill filed by Cadman and sworn to by him alleges that, at the time the deed was made, Cadman owed Peter ten thousand dollars, and Peter agreed to advance him twenty thousand dollars more; and that the deed was to secure the payment by Cadman to Peter of this thirty thousand dollars; that Peter was to sell the lands and out of the proceeds of the sale he was to pay himself said sums of ten thousand dollars and twenty thousand dollars and interest, &c. If it be established, beyond question, that the ten thousand dollars had nothing to do with the giving of the deed, that the deed was not given to secure the ten thousand dollars, and if Cadman long after the deed was given admits that the ten thousand dollars was a matter that he was to take care of and pay without any reference to the transaction of the giving of the deed. then we think we could confidently ask this court to find that the deed was not given to secure the payment of twenty thousand dollars but was an absolute sale of the property for twenty thousand dollars, even if there were no direct evidence of the fact. It would be a very strong circumstance tending to show that the whole theory of the bill is a mere fabrication. The court in considering this part of the case will bear in mind that the ten thousand dollars referred to in the bill is the two notes of five thousand dollars each that Peter gave to Cadman for his accommodation in 1872; and when the deed was given this ten thousand dollars was in two notes of five thousand dollars each, due in ninety days from October 16th and October 18th respectively. The notes would therefore fall due in January '76. Peter denies that the ten thousand dollars was in any way connected with the giving of the deed, and we desire now to call the attention of the court to Cadman's testimony on this point. Speaking of a conversation he had with Peter when he proposed to deed him the land, he says:

Q.—"Was there anything said in that conversation about your then indebtedness to him (referring to the $10,000?)" A.—"Yes."

Q.—"What?" A.—"About taking care of the ten thousand dollar notes."

Q.—"What was said?" A.—"I told him that would be ample security for the ten thousand dollars besides. That was one object I had in making the arrangements with him, that it might secure the ten thousand dollars besides."

Q.—"State what he said in relation to that?" A.—"He acquiesced in that. There was no different arrangement made before the papers were executed." (Record, p. 38.)

Q.—"Now, let me go back; you said this land was to be security for the ten thousand dollars and the twenty thousand dollars; was he to have any other interest in them?" A.—"The arrangement was that he was to have half of it after paying my indebtedness to him; in other words he agreed to give me half of that which remained after I paid him from the lands what I owed him." (Record, p. 39.)

Q.—"Have you ever paid that $10,000 you owed him before this transaction?" A.—"I have not."

Q.—When were those $5,000 notes last renewed by you or by him for you?" A.—"In the fall of 1875; I don't remember the exact date."

Q.—"From that time has he ever called upon you for the payment of those notes or any portion of them?" A.—"He never has." (Record, p. 41.) This is his testimony given on the direct examination.

On his cross-examination on this point he says:

Q.—"Do you recollect anything about the consideration mentioned in the deed?" A.—"I know it was twenty thousand dollars."

Q.—"Why wasn't it for this thirty thousand dollars if it was given to secure both." A.—"Because that other paper hadn't matured yet."

Q.—"Didn't the two notes for five thousand dollars each, making it ten thousand dollars, enter into and form a part of the consideration, the same as the twenty thousand dollars did, for the purchase of this land?" A.—"No, sir."

Q.—"Didn't you state upon the direct examination that you gave this deed for the purpose of securing the ten as well as the twenty?" A.—"I said that was my object, but it was no part of the consideration."

Q.—"Why didn't you pay that ten thousand dollars; tell me, didn't you state this to Mr. Peter at the time it was made, that you were making two thousand dollars; that it only cost you eighteen thousand dollars; that you would make two thousand dollars and apply it upon the five-thousand-dollar notes that you then held?" A.—"No, sir."

Q.—"That in the meantime you would take care of this other paper as it matured?" A.—"I have no recollection of anything of the kind."

Q.—"Why didn't you pay this ten thousand dollars?" A.—"Because I considered the land in his hands as ample security."

Q.—"I know, but you say that you gave him a paper that would save him harmless?" A.—"Yes, sir."

Q.—"Was any arrangement made then and there that you should not pay these two five thousand dollar notes—I mean on the 25th of October, when the land was deeded to you?" A.—"The only remark that was made about it was: "Now, Mr. Peter, you have ample security in your hands for the two notes of five thousand dollars."

Q.—"Who was to pay them when they did mature?" A.—"*Why, he was to take care of them.*"

Q.—"Did you at any time claim to him subsequently that he should pay those notes?" A.—"Nothing positive stated about it at all."

Q.—"You and he have never had any conversation concerning the payment of that $10,000 since that time?" A.—"No, I think not."

Q.—"You would remember it if you had?" A.—"I don't think we had any conversation about it."

Q.—"*And you never claimed after you put this security into his hands that you ought to pay it—that $10,000?*" A.—"*No, sir.*" (Record, pp. 56, 57 & 58.)

His testimony on this point is, in brief, that the land was deeded to Peter to secure the whole thirty thousand dollars, modified by his cross-examination that it was not a part of the consideration expressed in the deed, but the understanding was that it was to secure the whole thirty thousand dollars; that he had never paid the ten thousand dollars; that Peter had never called on him to pay it; and that he (Cadman) never claimed, after the deed was made to Peter, that he was to pay or look after the payment of the ten thousand dollars. Ten days prior to the making of the deed, Cadman had given Peter "Exhibit 7," a copy of which is at bottom of p. 139 of the record, but his testimony is to the effect that his obligation to take care of the notes, as stated in "Exhibit 7," was canceled by giving the deed to secure this ten thousand dollars as well as the twenty thousand dollars; that Peter was to take care of these notes and reimburse himself when he sold the land.

That this is not true the letters of Cadman to Peter, which we will now consider, demonstrate to an absolute certainty. That these letters refer to this ten thousand dollars is shown by Cadman's testimony, (Record p. 120) and Peter's testimony, (Record, pp. 128 & 129.) The letters above referred to are found on pp. 98 to 101 of the record. These two notes of five thousand dollars each would mature January 19th and 21st. January 12th, Peter gave Cadman two notes of five thousand dollars each to renew them. Cadman was not able to get the notes renewed with his own endorsment; and on the 13th, he wrote Peter as follows:

"Can you send me two notes of $5,000 each, with interest at ten per cent, with some endorser, that I may be able to retire the two notes which you gave me yesterday without any failure? *It pains me much to ask this*, but you know how people are stirred up from the bottom, and this paper must be paid promptly without any delay, sure." (Record, p. 98.)

Peter did not send the notes. January 21st, Cadman wrote Peter:

"Being unable to-day to get extended at the First National Bank the note due to-day, I have lodged as collateral the note of $5,000 and interest with the Peoples' Savings Bank, and have given them a draft at one day's sight on you for $5,000. I herein enclose the two old notes canceled, and expect that I shall use the notes at the Peoples' Bank to-morrow or Monday. O'Brien said he thought Mr. Carpenter would want it; therefore please accept draft when presented. I, of course, did this to save dishonor to your good name." (Record, p. 98.) Peter accepted the draft referred to in this letter.

Cadman then had the two notes of five thousand dollars each, given him January 12th, and Peter's accepted draft for five thousand dollars. Peter, on receipt of this letter, wrote Cadman, January 22nd:

"Yours of yesterday, with the old notes, is received, contents of which strike right home. I accepted your draft this morning. *What do you think of making a draft on me at one day for* $5,000? I do not have the money to pay this draft. This shows for itself how my notes are peddled in Detroit. I have told you before that my credit will suffer from such transactions. You say you did this to save my good name. This is a most cruel assertion to me, under the circumstances, as I derive no benefit from it. Let me know at once if I must raise the money to pay this draft. I have $5,000 to pay to your bank the same day. *I want you to send me something to show that the two notes and this draft are for your benefit, and for you to pay* in case I should be taken away, which we are all liable to be. My estate should have something to show—in fact, I myself should have it." (Record, p. 99.)

Cadman, in reply to Peter's letter of January 22nd, wrote:

"Yours 23rd inst. at hand; contents noted. I am sorely mortified and grieved that this should be the case, but I am entirely powerless to act. I think I can get the money on the other note in time to recall your acceptance. I have not peddled your notes. Mr. O'Brien some time ago asked me for some of your paper; therefore I went to him. I shall try and get the money, but if I do not you can draw on me at three days' sight, and I will get the money in meantime on the note. I hardly know what to do. *I will do anything in my power. I will send you my notes or anything I have.*" (Record, p. 100.)

Peter then drew a draft on Cadman, cashier, which Cadman did not accept, claiming it should have been drawn on him personally; and wrote Peter:

"I enclose herein, canceled, your note, $10,000. Jan. 23rd in N. Y. I much regret that you should have made the three days' sight draft on C. C. Cadman, cashier, as the bank cannot accept drafts, and have nothing to do with this; therefore draft will have to go to protest for non-acceptance. If you had made it on me personally I could have accepted it and made i O K, I think by maturity." (Record, p. 100.)

The ten thousand dollars referred to in this letter was a note which Peter had discounted at the bank, and has nothing to do with this transaction. January 28th, Peter wrote Cadman:

"Yours of the 27th is before me; contents noted. In reply must say that I overlooked the cashier part of it. It has harassed me so much that the last week or ten days I hardly know what to do or to think. *I have my own debts to pay* and losses to meet from my business, and then have those notes floating about. I will make another draft on you this morning in place of the one protested." (Record, p. 100.)

Cadman accepted this draft, but did not pay it. What will the court say with reference to the claim made by Cadman that the deed in question was given to secure this ten thousand dollars and that Peter never asked him to pay it, and that Cadman never considered that he was under any obligation to take care of this ten thousand dollars after the deed was given to Peter, when his testimony on this point is examined in the light that these letters, written three months after the deed was made, throw on the transaction? Why should Cadman say, when he wrote Peter, January 13th, for the two notes with an endorser, "It pains me much to ask this," if the arrangement was, when the deed was made, that Peter was secured for his liability on this indebtedness of ten thousand dollars? When Peter upbraided Cadman for drawing on him and demanded something from Cadman to show that the two five thousand dollar notes and the five thousand dollar draft were for Cadman to pay, in his letter of January 22nd, why, if Cadman's testimony is true when he says, Peter was to pay himself for the twenty thousand dollars and the ten thousand dollars when he sold the land, did he say in his letter of January 24th, "I am sorely mortified and grieved that this should be the case, but I am entirely powerless to act. * * I shall try and get the money, but if I do not you can draw on me at three days' sight, and I will get the money in meantime on the note. I hardly know what to do. I will do anything in my power. I will send you my notes or anything I have?" What could he have understood Peter to mean when he said, "I have my own debts to pay and losses to meet from my business, and then have those notes floating about. I will make another draft on you this morning in place of the one protested?" Why did he accept that draft, if it was not a matter for him to pay?

If the claim he makes now, that Peter was to take care of this ten thousand dollars and pay himself when he sold the land were not a mere fabrication, would he not have said: "Mr. Peter, you have no right to ask me for something to show that those notes are for me to pay. You have no right to upbraid me for troubling you in the matter. These notes are for you to take care of. I gave you a deed on the 25th of October, on which the ink is scarcely dry, which according to our agreement was received by you as security for this ten thousand dollars and the twenty thousand dollars you gave me that day. You were to take care of these notes and pay yourself when you sold the land; and I am surprised that you should want to repudiate that agreement and ask me to look after this ten thousand dollars. I relieved myself from any responsibility with reference to that $10,000 indebtedness when I deeded you the Newaygo county lands."

These letters show conclusively:

1. That Cadman's claim, made by his bill and testimony with reference to this transaction, is not true.

2. That these two notes for five thousand dollars each, which Peter had signed for the accommodation of Cadman, had nothing to do with the deed.

3. That the deed was not given for a loan of twenty thousand dollars and intended as a security.

4. That it was an absolute sale on the part of Cadman and a purchase on the part of Peter of the lands in question for twenty thousand dollars.

If there were still any doubt in the mind of the court that the claim made by Cadman, that this deed was intended as a mortgage, is absolutely false, that doubt must certainly be removed by a perusal of Cadman's letter written to Peter January 30th 1876, which is as follows:

"Detroit, Jan. 30, 1876. My dear Sir: I return your note, $5,000, herein. I cannot use it except to discredit you still more. I have resigned; am a ruined man; have lived here twenty-two years; always tried to do right, but have got behind a little by little year after year. *I have not a dollar, only some northern railroad stock.* I am not behind a dollar in the bank; all of our accounts, etc., are O K, but I owe so much money outside that I cannot stand the pressure. They cut down my salary, etc., some $900 per year. My family have gone into the country to board, and I am a ruined man and penniless. *I console myself in your case that the great bargain you made in the Newaygo lands will in some great measure compensate you for the loss you must incur, for I cannot take care of the acceptance due early in February.* I could have got $2,000 or $3,000 on your note yesterday, but that would only have led to more complications, and now leave with barely $30 in my pocket *and nothing to fall back on.* Hastily and in sorrow, Chas. C. Cadman." (Record, p. 101.)

Why does Cadman say, "I cannot take care of the acceptance due early in February," if his testimony was true when he said, "The deed was given to secure the ten thousand dollars, and I never considered that I had to pay this or trouble myself about it after the deed was given to Peter?" What does Cadman mean when he says, "I console myself in your case that the great bargain you made in the Newaygo lands will in some great measure compensate you for the loss you must incur?' Why does he speak of a loss Peter must sustain by being compelled to pay this ten thousand dollars, if he was to pay himself out of the lands deeded to him by Cadman? What loss? If Cadman's theory of the transaction involved in this case is correct, Peter lost nothing by Cadman's failure. Cadman owed him nothing. October 25th '75 he deeded Peter property to secure him for every dollar that Peter had advanced.

This letter shows conclusively:

1. That the transaction was a sale of the lands to Peter, and it was expected that eventually Peter would make something out of his purchase.

2. That it was never intended that Peter should be compelled to pay the acceptance drawn on Cadman by him to take care of this note at the First National Bank.

3. That, at the time, he rejoiced to think that there seemed to be a margin in the lands he had sold Peter, from which in time Peter, although compelled to pay these notes, would in a measure indirectly be protected; not because he (Cadman) had any interest in the lands, but because he (Peter) had purchased them cheap.

4. That, at that time, he (Cadman) did not claim any interest in the lands.

5. That a fair construction of the letter negatives the idea that Cadman had claimed to have any interest whatever in these lands.

6. That Peter, through Cadman's failure, would be required to pay ten thousand dollars that Cadman ought to have paid. This is Peter's loss. But Cadman consoles himself that Peter, having bought the lands in controversy cheap, will in some measure be compensated for this loss. Why

would he say Peter had made a great bargain, if he had not bought the lands? Would it be considered a great bargain, if he simply held the lands as security for the payment of ten thousand dollars less than he had paid to and for Cadman? When he says, "I am ruined and penniless, have barely $30 in my pocket and nothing to fall back on," could he have believed that he was entitled to the one-half of the surplus of the lands after Peter should repay himself twenty thousand dollars or thirty thousand dollars, when from his testimony he would have the court believe that at that time he considered the lands worth from sixty thousand to one hundred thousand dollars?

We submit that these letters, which were written and passed between the parties to this suit at so short an interval after the execution and delivery of the deed, have far more weight, and afford the court a much better guide in arriving at what the real transaction was, than the testimony of even honest men, who narrate their recollection of the transaction after the lapse of six years.

It was claimed, on the hearing in the court below, that Cadman's testimony is corroborated by the testimony of Alfred Russell; but we insist that such is not the case. The testimony shows conclusively that Russell did not hear the details of the bargain between Peter and Cadman. Russell says:

Q.—"Was there any conversation between the parties in your presence as to their bargain; it was not made there in your office, was it?" A.—"No; I think they had made their bargain before they came there; that is my recollection; and of course there was something said about it. The substance of it was that Mr. Peter had concluded to carry Mr. Cadman himself.". (Record, p. 87.) Cadman and Peter both swear that the bargain was made at the Michigan Exchange. Russell, in his testimony, says that the impression that he got from the conversation he heard between the parties at the time is embodied in the letter he wrote Mr. Peter February 4th '81; a copy of which is on p. 67 of the record. And in a postscript to the letter he says. "These transactions were had in my office and are within my recollection." The statement in this letter conforms substantially to the claim made by Cadman in his bill, but Cadman himself says there was no agreement that Peter should hold the lands as security for the payment of ten thousand dollars, and we have shown conclusively that the ten thousand dollars had nothing whatever to do with the transaction; and that Mr. Cadman and Mr. Peter neither of them understood at the time that it did, as Cadman's letters clearly show.

It should be borne in mind that Mr. Russell was not acting as the attorney for either party in the transaction, and had nothing to do with its details; that his testimony was given nearly six years after, and so far as the record discloses his attention was not in the meantime called to the matter; he was a lawyer of large practice and constantly engaged in the practice of his profession and in important business matters. We cannot better express the weight that should be given to Russell's testimony, under the circumstances, than to quote from the opinion of Judge Withey, in speaking of it in connection with Cadman's letters, on page 19 of this record:

"We are all conscious of the imperfection of our memory, and that our recollection of what we have heard said is apt to get mixed and misplaced, especially if we have heard statements on the same subject from different persons. It is familiar that mere recollection, unaided by written memorandum, is entitled to very much less weight than written declarations made at or about the time, and the written declarations of the parties, to which I shall refer, are, to my mind, wholly inconsistent with any such statement having been made by Peter as that he took the deed as security."

The testimony of Henry Russell does not contradict Peter and corroborate Cadman, as claimed by complainant's counsel in the court below; but, on the contrary, it corroborates Peter's testimony and contradicts Cadman's. The only circumstance that Russell remembers is that he took the acknowledgment of the deed between one and three o'clock. This corroborates Peter's statement that the deed was already signed when he went to Alfred Russell's office in the after-

1 Greenleaf on Evidence, Sec. 201: note 1, bottom of p. 231.

There was no proper notice given to produce the letter Cadman claimed to have written Peter; and no reason given for not producing the letter he claimed to have received from Peter. Peter denies ever receiving the letter from Cadman; and denies writing him. (Record, p. 96.) It is very singular that Cadman would not have made a vigorous effort to produce such a letter from Peter if he had received it; and it is still more singular that a man who was as much in want of funds as Cadman was, and who claimed to own an interest in these lands, should have allowed even three years to go by without writing Peter to sell the lands so that he could realize on his interest. It is merely Cadman affirming that he received such a letter and Peter denying it, Cadman having the burden of proof, with the circumstances all corroborating Peter's testimony.

It will probably be claimed that these lands were worth more than twenty thousand dollars at the time they were conveyed to Peter. This is a circumstance that can be considered by the court in connection with the other facts in the case; but a mere inadequacy of consideration will not change the character of the deed to a mortgage, where no fraud is practiced. That Cadman received a *bona fide* offer of thirty thousand dollars cash for the property we do not believe.

Peter says, (Record, p. 117) "There was something said of an offer, but they could not get the money. I think that Mr. Cadman said that he had an offer, but the man could not get the money—could not raise the money." This Cadman does not deny. Cadman's testimony as to what Steele told him with reference to the offer that had been made to him was clearly incompetent and hearsay. But on this point we think the clear preponderance of the testimony is to the effect that Cadman, a few weeks before, had agreed to pay but eighteen thousand dollars for these same lands; that when the deed was made to Peter he had paid but a small portion of this; and that he used the money obtained from Peter either directly, or indirectly, in paying Ward for the land. Peter testifies that Cadman said he bought the lands for eighteen thousand dollars, and that the surplus of two thousand dollars he would apply on the two notes of five thousand dollars each. (Record, p. 95.) Cadman denies this; but the testimony of Henry N. Walker, (Record, p. 109) corroborates Peter's testimony. This is certainly true, that Cadman did not agree to pay Ward more than twenty thousand dollars for these lands. And we are unable to see the consistency in Cadman claiming that he could legally buy the lands from Ward at a bargain, but that a court of equity would not uphold Peter in buying the lands from him at a bargain. The relations between Ward and Cadman were certainly as confidential as those existing between Cadman and Peter; and Cadman's necessities for money were no greater when Peter dealt with him than Ward's when Cadman dealt with him.

It is also established by the proofs that, for three months, Russell and Cadman had been trying to effect a loan on these lands for twenty thousand dollars on long time, with interest at ten per cent. payable semi-annually. It is a matter of history that, in 1875, the financial affairs in this country were greatly depressed; that the lumbering interest seemed to be entirely paralyzed; and that pine lands, like these in dispute, were a drug in the market. Cadman had failed in his effort to effect a loan on the land; he had entered into this arrangement to furnish Ward money to contest his father's will; he had complicated his friends in his efforts to raise money; the paper that his friends had accommodated him with was fast falling due; he had, without any authority, caused a draft for ten thousand dollars to be drawn on Peter, which he had discounted and which Peter refused to accept; this had to be taken care of to exhonerate Russell, who drew the draft and had it discounted and there remained but one thing for him to do, viz.: to sell the land for the best price he could get. Peter at this time had had the lands examined, with a view of purchasing them; and, being satisfied that there might eventually be a margin, saw fit to take his chances for success or ruin. He stepped into the breach. Cadman realized his money. Peter has paid what he agreed to and has paid the taxes on the same for six years; and, we submit, he should receive the margin, if there be any, for it legitimately belongs to him.

Would a business man, who had already loaned his name for ten thousand dollars, be likely to loan his name for twenty thousand dollars more and subject himself to the payment of taxes on the land, carry this large indebtedness an indefinite length of time at 7 per cent. interest, take his chances of the destruction of the timber by fire, and especially so when he had all the indebtedness he could well carry of his own, and then trust to chance, judging of the prospects and outlooks for lumber in 1876, for what he was to receive according to the bill in this case.

The court will bear in mind that there is no claim made that Cadman was to pay Peter any deficiency that might exist if the sale of the land should not realize enough to pay Peter what he had advanced to Cadman. Peter was to take all the risk; and those familiar with the terrible forest fires of Michigan are aware that it was no small risk. The prosperity of this country for the six years prior to the filing of the bill, and the great boom in pine lands, has, to our minds, written the true history of this case. If the financial circumstances of this country and the lumbering interests of Michigan were to-day the same as they were in October 1875, or if these lands had depreciated in value, we hardly think Peter would have ever heard of this litigation.

The law is well settled that a deed absolute in form will not be decreed to be a mortgage, unless the testimony is entirely plain and convincing, beyond reasonable controversy.

In addition to having the affirmative of the issue, the complainant has the additional burden of showing that the effect *prima facie* due to the deed is not the effect equitably due to it; and unless the proof is entirely clear and convincing, the writing will be held to express correctly the intention of the parties.

"In each case the burden rests upon the moving party of overcoming the strong presumption arising from the terms of a written instrument. If the proofs are doubtful and unsatisfactory, if there is failure to overcome this presumption by testimony entirely plain and convincing, beyond reasonable controversy, the writing will be held to express correctly the intention of the parties. A deliberate deed or writing are of too much solemnity to be brushed away by loose and inconclusive evidence." Howland v. Blake, 97 U. S., 626.

"It would, we think, be exceedingly dangerous and tend to weaken confidence in titles generally, if the effect of deeds of conveyance, leases or other written evidences of title could be thus changed by a verbal agreement, except in very clear cases where the contract is proved to the entire satisfaction of the court. It should never be done upon a slight preponderance of evidence; the court should be satisfied beyond a reasonable doubt." Case v. Peters, 20 Mich., 303.

"In applying this jurisdiction it is needful to proceed with great circumspection. The natural and prima facie effect of a conveyance expressing no condition and regularly executed in the presence of attesting witnesses and duly acknowledged as an absolute deed ought not to be controlled and qualified by oral evidence and brought down to the effect due to a mere security on a slight showing. The great current of authority is distinct in holding that the party thus seeking to modify the operation of an instrument and prove himself entitled, against the terms of his own deed, to an equity of redemption is not only bound to make out that the transaction was in truth and justice nothing more than the giving of security, but is required to do so by a force of evidence sufficient to command the unhesitating assent of every reasonable mind." Tilden v. Streeter, 45 Mich., 540.

"The deed is absolute upon its face. Complainant relies upon parol, contemporaneous agreement that it was received as a mere mortgage and that he was to have the right to redeem. To establish such an agreement his proof should be clear, satisfactory and conclusive and not be made up of loose and random conversations with respondent. Witnesses are so liable to forget or unwittingly misrepresent or mistake such conversations that their testimony should as a general rule be received with great caution. Indeed, all parol testimony, against the answer of a respondent, to establish a trust or to make a conveyance absolute upon its face a mortgage should be clear, and even then received with great caution." Corbitt v. Smith, 7 Iowa, 60.

See also,

Kent v. Lasley, 24 Wis., 654.

Smith v. Creever, 71 Ill., 185.

Hyatt v. Cochran, 37 Iowa, 309.

Gardner v. Weston, 18 Iowa, 533.

Noel v. Noel, 1 Iowa, 423.

There is no pretence in this case that there is any evidence tending to corroborate Cadman, except the testimony of Alfred Russell, and in view of the fact that he does not claim to have heard the bargain and had nothing to do with the details of the transaction; that his attention had not been called to the matter for six years before he was examined as a witness; that there are facts disclosed by this record that tend strongly to show that he was interested with Cadman in this litigation; and the further fact that we have shown that his recollection of an important feature of the transaction is at variance with the facts, it seems to us that it leaves the case with simply Cadman affirming that this deed was intended as a mortgage and Peter denying it. And when we consider that Cadman has contradicted himself with reference to almost every feature of the case; that he has been shown to be untruthful in many particulars by disinterested witnesses and the records of the bank; and that his letters stamp as false his theory of one branch of the case; while on the other hand Peter stands uncontradicted, except by Cadman, in every essential feature of the controversy and is in many instances corroborated by disinterested witnesses and by all the circumstances of the case, how can it be claimed that Cadman has, *by testimony entirely plain and convincing, beyond reasonable controversy*, established that the effect *prima facie* due to the deed is not the effect equitably due to it or that the writing does not express correctly the intention of the parties?

We submit that a careful perusal of the record does not even give rise to a suspicion that Cadman's theory of this case may be the true theory, to say nothing of its failure to establish it as a fact beyond reasonable controversy; and that complainant's bill was properly dismissed on the merits; and the decree appealed from should be affirmed.

ARGUMENT OF THE LEGAL QUESTIONS.

I.

We submit that the allegations contained in the second paragraph of complainant's bill, which is the gravamen of the bill, if true, show a trust in lands, which is void under the statutes of this State, it not being in writing.

The allegation to which we refer is, that the land was deeded to Peter to secure the payment of $30,000 and all taxes that he might pay up to the time of sale, and when the land is sold Cadman is to have one-half of margin, and Peter the other half.

It seems to us that this allegation in the bill shows that Cadman claims, by this verbal agreement, that he has an interest in these lands to the extent of one-half of whatever its value may be over and above the $30,000 and interest and taxes paid. If we are right in this construction of this allegation, then he seeks to create a trust or interest in lands by parol, which is prohibited by statute.

The statutes of Michigan are very explicit to the effect that trusts in lands cannot be created by parol; and our supreme court have, in construing these statutes, always given full effect to a strict interpretation of them.

Section 5569 of Howell's Annotated Statutes of Michigan provides that:

"When a grant for a valuable consideration shall be made to one person and the consideration therefor shall be paid by another, no use or trust shall result in favor of the person by whom such payment shall be made, but the title shall vest in the person named as the alienee in such conveyance, subject only to the provisions of the next section." The provisions of the next section referred to relate simply to conveyances fraudulent as against creditors.

Section 5573 provides that:

"Express trusts may be created for any or either of the following purposes: * * * 5. For the beneficial interest of any person or persons, when such trust is fully expressed and clearly defined upon the face of the instrument creating it, subject to the limitations as to time prescribed in this title."

Newton v. Sly, 15 Mich., 395.

Jackson v. Cleveland, 15 Mich., 94.

Palmer v. Sterling, 41 Mich., 218.

Section 6179, which seems to us to cover the case made by complainant's bill, reads as follows:

"No estate or interest in lands, other than leases for a term not exceeding one year, *nor any trust or power over or concerning lands, or in any manner relating thereto*, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing."

The principle for which we contend is recognized in Sanderson et al. v. Graves, 13th English Reports, p. 364, (Law Reports, 10th Common Pleas, 234), which holds that an agreement for the division of profits on the sale of certain leases of land was within the statute, and not being in writing could not be enforced. In that case the plaintiffs entered into an agreement in writing with the defendant to let him a public house, as tenant, from year to year, with the option on his part to call on them to grant him a lease of the house for twenty-eight years, on the terms, among others, that if he sold such lease for more than £1,200 he should give the plaintiffs half the difference. The plaintiffs granted him the lease. He sold for £2,500. The plaintiffs claimed one-half the difference, or one-half of £1,300. The defendant denied their right to recover, on the ground that the lease was not granted under the agreement above mentioned, but under a new one, which, not being in writing, cannot be enforced. The new agreement changed some of the provisions in the written contract, but the jury found that the stipulation as to dividing the surplus over £1,200 remained in force, or was renewed. The defendant contended that the new arrangement related to an interest in lands, and not being in writing could not be enforced, and this view was sustained by the unanimous opinion of the court.

We submit that this case establishes the doctrine that when, by the terms of the agreement, there is to be a division of the surplus or profits from the sale of real estate, it is an interest in lands and comes within the statute; and whenever this agreement rests in parol it cannot be enforced, either at law or in equity.

II.

The allegations of the bill, would not, if true, make this deed an equitable mortgage.

In the case of Baker v. Thurber, 4 Denio, 493, an agreement similar to the one under consideration, although in writing, was held not to constitute a mortgage. Bronson, delivering the opinion of the court, at p. 495, says:

"These two instruments must undoubtedly be read and construed together; but they do not make a mortgage. A mortgage is a conveyance of lands, upon a condition in the deed, or a defeasance out of it, that on the grantor's paying a sum of money, or doing some other act, puts an end to all title and interest in the grantee. There was no condition or agreement under which the title could ever become revested in the grantor. It is impossible to hold that this is a mortgage, or anything in the nature of a mortgage."

The same is true of the parol agreement set forth in the bill filed in this case. It will be borne in mind that, at the time the deed was executed, the relation of debtor and creditor did not exist between Cadman and Peter. It is true that Cadman had Peter's notes for $10,000, but they did not create an indebtedness from Peter to Cadman. Peter did not loan Cadman $10,000, but simply gave him his two notes for $10,000 for Cadman's accommodation, and Cadman, both before and after the deed was made, gave Peter writings to show that these notes were for Cadman to pay, so that Cadman could not have required Peter to pay this $10,000, and we have shown that this $10,000 is in no way connected with this transaction. Now, give the parol agreement set out in the bill the most liberal construction possible and it will not appear that Cadman obligated himself to pay Peter a dollar at any time in the future, and this being true, it follows that by the transaction Cadman did not become indebted to Peter, and there was therefore no indebtedness that the deed could possibly have heen given to secure the payment of. If the deed was given by Cadman to Peter as security, there must of necessity have been something which Cadman agreed to do, the performance of which was to be secured by the deed given to Peter, and on the performance of which Cadman would have a right to call upon Peter to release the security. Did Cadman agree to repay to Peter any money? Did Cadman agree to do anything, which having done Peter could be called upon to reconvey the land to him? Certainly not. The whole theory of the bill goes to show that it was never intended by either Cadman or Peter that Cadman should ever be reinvested with the title to these lands under any circumstances, so that there is no element in complainant's theory of this case which could give to this deed the character of an equitable mortgage or security.

Both essential elements of a mortgage or an instrument in the nature of a mortgage are wanting. There was nothing to be done by Cadman, the performance of which was to be secured, and there was no understanding that when Cadman had done something the property was to be reconveyed to him.

In the case of McCauley v. Porter et al., 71 N. Y., p. 173, this question was again before the Court of Appeals. Statement of facts: Miss Tracy gave Porter a deed of certain lands, and then took back an agreement as follows: "In consideration of the sale and conveyance of a lot, 44 feet front by 408½ feet deep, on the east side of Alexander street, by Miss L. Tracy to S. D. Porter; I, S. D. Porter, agree to take said property, subject to a mortgage to the Rochester Savings Bank, of $1,200, all other incumbrances and taxes to be paid off by Miss Tracy; and I will pay her in cash $1,300, and I will sell the property, at her discretion and mine, within the year, and divide the profits equally. I will loan her $500 and take her note, to be paid within the year, or sooner if the property is sold. If the property shall be sold for $4,000 within four months, I will cancel the note and surrender it to her. The premises may be sold at the option of either party for not less than $4,000. If not sold within one year from date, all interest of Miss Tracy in the premises shall cease."

The referee found that the deed taken and construed with the agreement above given did not constitute a mortgage, but gave Porter the fee to the land, and on p. 177, Rapallo, J., delivering the opinion of the court, says: "It is difficult to see how the court could have arrived at any other conclusion. The agreement was not a defeasance which was to render the deed void on the payment of any sum of money, nor was there anything in the transaction in the nature of a mortgage. Porter was not a creditor, taking the land to secure any debt. No debt existed or was created in respect to the $2,500 paid for the property. If the land had depreciated, Porter would have had no claim for re-imbursement, nor was any privilege reserved to Miss Tracy to redeem it on payment of any sum. These circumstances are of great importance in determining the character of the transaction. There was no condition attached to the grant upon which it was to become void and the property revert to the grantor. The agreement clearly shows that the title was to pass to Porter; that he should have power of disposition over it, and all that he undertook to do was to account to his grantor for one-half of the profits which might be realized by him on a re-sale if made within the year, and that he would not sell within the year for less than $4,000 without the consent of Miss Tracy. Such an agreement is not inconsistent with the vesting of the title in him, and to record such a deed and agreement as a mortgage would have been clearly improper."

Farther on the court speaks of such an agreement creating a trust, and then refers to and approves of the case above cited in the 4 Denio, p. 493.

We deduce from these cases above cited, that the parol agreement set out in the bill and attempted to be proved in this case, if true, would not render this deed a mortgage. It would create a trust in the lands by parol, which is prohibited by the statutes of Michigan.

To the same effect, see
71 Cal. 28
Pacific Reporter Vol. 9, p 547
North Eastern Reporter, Vol. 4 p 512
117 Ill. 276

It seems to us that the courts in allowing an absolute deed to be changed to an equitable mortgage by parol, when there was no fraud in procuring the deed, have approached very near the point where they infringe on the rule, that a written instrument cannot be changed by parol evidence. The doctrine that a deed obtained without fraud may be shown to be a mortgage unless very closely guarded, furnishes a favorable opportunity for unscrupulous persons to gain advantage by resorting to perjury; and while in some instances a failure to give effect to this doctrine would work hardship, we think on the whole, justice would be better subserved by requiring parties to express by their written instruments, the true nature of their transactions. In the absence of any statute of Michigan prohibiting this, however, the doctrine that a deed may be shown by parol to be but a mortgage must be regarded as the law established by authority, if not sound in principle.

Giving full effect to that doctrine, however, will not aid complainant in this case, for the statutes of Michigan above referred to, provide that the arrangement or agreement which he sets up in this case cannot be enforced unless that agreement is evidenced by a written instrument. The distinction between the doctrine of an equitable mortgage, and the case made by this bill, it seems to us, is clear.

A deed is shown to be a mortgage by parol on the theory that it was not the intention of the grantor to divest himself absolutely of the title to the land, but to transfer the title to the grantee temporarily as security for the performance of something by the grantor, on the performing of which the grantee would reconvey the land to him. In a transaction of that kind it is not understood by the parties that the grantee is at liberty to transfer the title to some one else. He must hold it so that when the condition has been fulfilled he can convey it back again. It is not understood to be a transfer of the title to the land strictly speaking. Before the title can be said to have passed from the grantor, his equity of redemption must be foreclosed substantially the same as if the instrument were an ordinary mortgage.

The grantor and grantee both understand that the equitable title to the land remains in the grantor and it is this equitable title that courts of equity protect although the instrument is an absolute deed; but the case made by this bill is entirely different. The parties both understood that both the legal and equitable title to these lands passed to Peter by the deed of October 25. There remained in Cadman no equity of redemption. The whole title passed to Peter and he was at liberty to convey the lands to any one, and it was not expected by Cadman that they would ever be reconveyed to him. Cadman's claim is, that notwithstanding the fact that he has conveyed the title, both legal and equitable to Peter, he by a parol agreement was to still retain an interest in the lands, or the proceeds of the sale of the lands.

This, we insist, the statutes of Michigan before referred to, prohibit. There is no claim made by Cadman that Peter was guilty of any fraud in obtaining this deed. He claims that the fraud consists is his refusal to execute the trust and that this trust may be established by parol; but this would be a clear violation of the statute. The falacy of complainant's theory is clearly shown in Rasdall's Administrators v. Rasdall, 9 Wis., 379.

Paine. J., on page 386, says:

"Placing the relief in such cases upon the ground of fraud, is implied by admitting that the parol evidence cannot be admitted to establish the trust, for the purpose of enforcing it, directly as a trust. And this is also expressly admitted. But it seems apparent to my mind that to say in such a case, it shall be admitted to establish the fraud, is equally a violation of the statute. Because the fraud consists only in the refusal to execute the trust. The court, therefore, cannot say that there is a fraud, without first saying that there is a trust. And the parol evidence, if admitted, must be admitted to establish the trust, in order that the court may charge the party with fraud in setting up his claim against it. Conceding then, that this cannot be proved by parol, is it not a mere evasion of the statute to say, that they will allow it to be proved by parol for the purpose of enforcing it indirectly, by charging the party with fraud for refusing to execute it? Such a course does not relieve the court from the charge of violating the statute, but subjects it to the odium of an attempted, but unsuccessful evasion."

This is an instructive case upon the questions involved in this record. It clearly points out the distinction between the use of parol evidence to establish a trust and the use of parol evidence to show that a deed, absolute in form, may be in equity but a mortgage. That evidence of a parol agreement to take and to hold the title to real estate for the benefit of the grantor can not be given in an action to compel the grantee to execute the agreement on the ground that his refusal to do so is a fraud upon the rights of his grantor and that the mere refusal of a grantee to execute a parol agreement to hold real estate in trust for the grantor is not such a fraud as will justify the admission of parol evidence of the agreement.

Lathrop v. Hoyt, 7 Barb., 59, is to same effect.

Lathrop's land was about to be sold under a mortgage foreclosure. He claimed that Hoyt agreed to attend the sale and bid in the property for the amount due on the mortgage and take the deed in his own name and that when Lathrop would pay him the amount paid and interest and expenses, he would convey the land to him.

Hoyt sold the land for $317 more than he paid for it and Lathrop, claiming that Hoyt held this money in trust for him, brought his action to compel him to pay it to him and recovered judgment.

Mason, J., rendering the opinion, says:

"I am satisfied, after a careful examination of this case, that we can not permit this judgment to stand. The agreement set forth in the complaint, and proved upon the trial, is most clearly within the statute of frauds, and consequently void." * * * * "Here the trust results from the agreement between the parties. The plaintiff agreed with the defendant, that he should go to this sale, and bid in these premises for him, if you please, and take a deed in his own name, and give the defendant time to pay him the amount of his bid, and then the defendant agreed he might have the title. Such a case is most clearly within the statute, and falls within its very words. The statute is as follows: 'No estate or interest in lands, other than leases for a term not exceeding one year, *nor any trust* or power over or con-

Colton v. Rose, 2 Paige Ch., 396.

Adams v. Rynson, 2 Hal. Ch. N. J., 618.

It is also well established that relief will not be granted when the prayer for relief does not conform to the case made by the bill. Allegations without proof, and proof without allegations are alike unavailing as a basis for equitable relief.

Kelly v. Kelly, 54, Mich., 30.

Boon v. Chiles, 10 Peters, 177.

Hobson v. Heirs of McArthur, 16 Peters, 182.

Conceding all the allegations of the bill to be true, complainant would not be entitled to the relief prayed for, even if there were no legal impediment to granting any relief at all. It is not the province of a court of equity to make contracts for parties, but to compel the performance of contracts already legally made. We respectfully submit in conclusion that the decree dismissing complainant's bill should be affirmed.

GEER & WILLIAMS,
Solicitors for Defendant.

ASHLEY POND,
Of Counsel.

118-73

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

CHARLES C. CADMAN,
vs.
WILLIAM PETER.

Appeal from the Circuit Court of the United States
For the Western District of Michigan.

BRIEF OF ASHLEY POND,
Of Counsel for Defendant and Appellee.

Supreme Court of the United States.

CHARLES C. CADMAN,
Complainant and Appellant.
vs.
WILLIAM PETER.

BRIEF OF ASHLEY POND FOR DEFENDANT.

STATEMENT OF CASE

The case is this:

October 25, 1875, complainant conveyed to defendant by warranty deed for the expressed consideration of $20,000 a tract of land in the State of Michigan, and on the same day defendant made and delivered to complainant his four promissory notes for $5,000 each; two of said notes payable four months from said date, and two six months from said date with interest at *8 per cent.*, and as security for the payment of said notes executed to complainant a mortgage upon the said tract of land.

Prior to the date of this transaction defendant had become accommodation maker for complainant of two promissory notes in the sum of $5,000 each, which had been negotiated by complainant and were then outstanding.

The object of this suit is to establish the said deed to have been in the nature of a mortgage and to be permitted to redeem.

The bill, filed April 1, 1881, alleges that the conveyance of said land was made to said defendant as security for said sums of $10,000 and $20,000 represented by said notes, and that defendant "was to hold said land until such time as it might "be sold at a profit or for a greater sum than could be "then realized, and when such time should come was to sell "said land in the most advantageous manner possible, and "out of the proceeds arising from such sale was to pay himself the said sums of $10,000 and $20,000 and interest thereon "at the rate of *7 per cent.* per annum, and the taxes on said "lands that he should have paid, and should divide the surplus, "if any, paying over to complainant one half and retaining "the other half of the surplus to recompense him for his "labor, trouble and expense in and about the sale and disposal of said property."

The bill further alleges that "the said transaction was "intended to operate as a security from complainant to "defendant to secure the payment of the said $30,000 and the "interest thereon, and was so construed by both complainant "and defendant."

The answer denies the alleged agreement; denies that said deed was made as security; avers that said lands were purchased by defendant from complainant for the agreed price of $20,000.

The evidence will be referred to as material in the course of the argument.

The Court below *dismissed the bill* and complainant appeals.

It will be seen that complainant's case rests wholly upon the alleged agreement. If it has not been proved, or if proved, if its legal effect be not such as to convert the deed into a mortgage his case fails.

I therefore discuss briefly two propositions, to-wit:

1. The alleged agreement is not proved.
2. If the alleged agreement were proved it would not avail to convert the deed into a mortgage.

I.

The alleged agreement is not proved.

I do not controvert the proposition in support of which complainant's learned counsel seems to have deemed it necessary to cite many authorities, to wit: "That parole testimony is admissible to prove that a deed absolute is intended as a mortgage." The doctrine has become elementary.

But the admission that "undoubtedly the burden of proof is upon the party seeking to show a deed absolute to be a mortgage and that the testimony must be clear," does not go far enough.

The testimony must be "entirely plain and convincing beyond reasonable controversy." Hunt, J., 97 U. S., 627.

However, it is not necessary to be critical upon this point, for a moment's examination of the records will demonstrate that the testimony in this case falls far short of the standard conceded by counsel. It will clearly appear that it is not "clear" much less "plain and convincing beyond a reasonable doubt."

On the part of complainant the only direct testimony as to the alleged agreement comes from himself and from his witness Alfred Russell.

Complainant testifies exactly in accordance with the allegations of the bill. Record p. 39.

Russell's testimony is as follows, to-wit:

On Direct-Examination. Record p. 67.

"Mr. Peter came in my office and inquired in regard to "the loan, whether Dr. Ayar was going to make it, and he "subsequently said to me—of course I told him that Dr.

"Ayar declined to loan; he subsequently came and said that "he had concluded to carry Mr. Cadman himself on that land; "that Mr. Cadman already owed him $10,000, and he had "concluded to take a deed of the land and let him have "$20,000 more, and hold the property as security for the "whole sum of $30,000. He said that he wanted a deed out "and out, so that he could handle it. And he and Mr. "Cadman came to my office and desired me to prepare the "papers. I don't remember whether Mr. Cadman was with "him or not the first time, but I think he was."

On Cross-Examination, p. 87:

Q. "Was there any conversation between the parties in "your presence as to their bargain? It was not made there "in your office, was it?"

A. "No, I think they had made their bargain before they "came there; that is my recollection; and, of course, there "was something said about it. The substance of it was that "Mr. Peter had concluded to carry Mr. Cadman himself." Record p. 87.

Again, Record p. 92.

"As I understood it the consideration for the deed was "that Peter could have the interest upon $30,000; whatever "taxes he paid, and one-half the surplus, whatever it might "be, when the land should be sold."

Q. "Any time specified within which it should be "sold?"

A. "No, sir."

Add to this testimony such weight as should be given to the testimony on the subject of the "inadequacy of the consideration" for the deed; "the confidential relations" between complainant and defendant and "the necessities" of complaint, and we have all the testimony which is supposed to make for complainant on this issue.

As to the alleged inadequacy of consideration; one or two witnesses who had never seen the land, testify evidently somewhat wildly as to its value upon the basis of the amount and value of the timber upon it, as estimated by one Rankin who had examined it in the years 1873 and 1874. On the other hand it is beyond question that complainant purchased said land only about three months before the transaction in question for the consideration of $20,000 or less; and that he had made strenuous ineffectual efforts to borrow that amount upon it.

The supposed "confidential relations" between complainant and defendant consisted wholly in the fact that complainant was cashier of a bank of which defendant was a stockholder; and that on one occasion defendant gave complainant a proxy to vote his, complainant's stock.

That complainant was in a somewhat "embarrassed condition" at the time of the transaction in question is undoubtedly true. But it is also true that men, when in an embarrassed condition are competent to sell, and as frequently sell, at a sacrifice, property, which they own, as mortgage it.

Opposed to the case thus made on behalf of complainant, stands:

1. The testimony of defendant denying the alleged agreement.
2. The form of the conveyance.
3. The fact that the grantee, defendant, concurrently with the execution of the deed, gave his negotiable notes to the grantor, complainant, for the amount of the consideration named.
4. The fact that the grantee gave to the grantor a mortgage upon the land conveyed to secure the payment of such notes.
5. The fact that within three months after said alleged agreement was made a correspondence was had between the parties wholly inconsistent with the existence of any such agreement, to-wit: Complainant wrote letters to defendant which assumed that he, complainant, was bound to pay the two accommodation notes made and outstanding before the deed in question was executed, and defendant wrote complainant requesting "something to show" that the said two

notes were for his, complainant's benefit. *Cadman to Peters, January 22, 1886, Record page 98. Peters to Cadman Record page 99. Cadman to Peters, Record page 100.*

6. The fact that within five days of three months after the execution of said conveyance complainant wrote defendant a letter wholly inconsistent with any other understanding than that the transaction witnessed by the conveyance in question was anything other than an absolutely purchase by complainant of the land in controversy. *Cadman to Peters, January 30, 1876, Record page 101.*

I do not think it necessary to spend time in answering the suggestion or assertion of counsel for complainant (see his brief, page 13) that the testimony of Peter is entitled to very little credit.

I may say, however, that so far as appears by this record his testimony seems entitled to quite as much credit, to say the least as that of Cadman. Certain it is, that his, Peter's testimony is not inconsistent with the tenor of his letters written concurrently with the transactions about which he testifies, while decidedly the contrary is true of Cadman's testimony.

And I may further say that there is no foundation in the record for the statement that he, Peter, is contradicted "in the most material and vital points" by Harry Russell, whom I freely concede to be "a most reputable member of the bar." In no respect whatever is there the slightest contradiction between Peter's testimony and that of the witness Harry Russell.

Between the witness Alfred Russell and Peter there is unquestionably some contradiction. That is to say, Russell testifies to statements made to him by Peter in conversations, which statements Peter denies that he made. Upon the subject of these contradictions I care to say nothing, except by quotation from the opinion of the learned Judge who decided this case in the court below, to-wit:

"We are all conscious of the imperfection of our memory, "and that our recollection of what we have heard said is apt "to get mixed and misplaced, especially if we have heard "statements on the same subject from different persons It "is familiar that mere recollection, unaided by written memoranda, is entitled to very much less weight than written "declarations made at or about the time, and the written "declarations of the parties, to which I shall refer, are to my "mind, wholly inconsistent whith any such statement having "been made by Peter as that he took the deed as security."

I submit that the testimony upon this issue is so far from being "clear" in complainant's favor, as to be "entirely plain and convincing beyond reasonable controversy" against him.

II.

If the alleged agreement were proved it would not avail to convert the deed into a mortgage.

The essential essence of a mortgage is the right to redeem, the right of the mortgagor to discharge the obligation for which the mortgage stands as security and be reinvested with the title to the mortgaged premises.

But here the form of the conveyance and the terms of the alleged agreement are equally inconsistent with the existence of such right, in complainant.

The agreement, if made, *was a confirmation, not a modification* of the legal effect of the deed as an absolute unconditional and perpetual conveyance of the title.

It is clear that it was not within the understanding or contemplation of the parties that any right of redemption was to remain in complainant.

The right and the only right secured to him by the alleged agreement was a right to share in any profits which might be realized upon a sale of the land.

If such an agreement had been made in writing it would have created a valid, active trust under Subdivision 5 of Sec. 5573, 2 Howell's Statutes of Michigan, which a court of equity would enforce. But as an oral agreement it was ineffectual to that end under the provisions of the Statute of Frauds, 2 Howell's Statutes, Sec. 6179.

I am unable to see the force and application here of the proposition of complainant's counsel—see his brief, page 3—that "The fact that a grantee is to have the entire management of the property does not prevent a deed becoming a "mortgage," or the proposition that "If the deed was "intended as security the right to redeem attaches thereto, "even if the grantor at the time agrees to release this right "of redemption."

If I understand the former proposition it means neither more nor less than that the fact that the grantor under a deed in form absolute is by express agreement or otherwise let into possession and authorized to exercise the powers of management and control does not preclude the grantor from showing, if he can, such deed to have been given as security so as to convert it in equity into a mortgage.

That this is correct I do not doubt. But how, being true, it aids complainant's case I can not understand.

The meaning of the other proposition is not quite clear; but, referring to 1, Jones on Mortgages, Sec. 25, cited in its support I find that the text reads as follows, to-wit:

"A deed absolute in form with an agreement under seal "made by the grantee at the same time, promising to reconvey within a specified time, upon repayment of the sum paid "for the deed, with interest, constitutes a mortgage, although "it is stipulated that if the grantor fails to repay the sum "within the time specified, the agreement shall be void and "the deed absolute, with no right of redemption. This latter "provision is, in fact, regarded as quite decisive of the understanding of the parties that the transaction was a conveyance of the estate, defeasible upon the paymont of the "money."

Certainly sound doctrine, but how in point? The question here is, as to whether or not a right of redemption ever existed; Not as to the validity of a release of a right of redemption conceded to have once existed.

I submit that the decree below must be affirmed.

ASHLEY POND,
Of Counsel for Defendant.